KN 60 HUG

MIDDLE TEMPLE LIBRARY
WITHDRAWN STOCK

171.7

THE

PRACTICE OF SALES

OF

REAL PROPERTY,

WITH

PRECEDENTS OF FORMS,

COMPRISING

PARTICULARS AND CONDITIONS OF SALE, CONTRACTS, CONVEYANCES, ASSIGNMENTS, DISENTAILING DEEDS, AND EVERY MODE OF ASSURANCE FOR CONVEYING LANDED PROPERTY.

By WILLIAM HUGHES, Esq.,

Barrister-at-Law,

Author of "The Practice of Mortgages," "Concise Precedents in Modern Conveyancing," "The New Stamp Act," &c.

TWO VOLUMES.

VOL. II.

SECOND EDITION ENLARGED.

LONDON:

JOHN CROCKFORD, LAW TIMES OFFICE, 29, ESSEX STREET, STRAND.

1850.

LONDON:
PRINTED BY JOHN CROCKFORD, 29, ESSEX STREET,
STRAND.

CONTENTS

TO VOL. II.

CHAP. VIII.

TITLES OF COPYHOLD AND CUSTOMARY ESTATES.

I. *Properties incidental to copyhold and customary estates.*
II. *Custom.*

1. Requisites to constitute.
2. Evidence of custom.
3. Must have existed from time immemorial.
4. Rules of descent how governed by the custom.

III. *Alienation of copyholds.*

1. Copyholds pass by surrender and admission.
2. Operation of surrender.
3. Presentment.
4. What estate passes by surrender.
5. Admission.
6. Of the declaration of uses.

IV. *Tenant right of renewal.*
V. *Of conditional fees.*
VI. *Estates tail in copyholds.*

1. Old mode of barring entails.
2. Modern mode of barring entails.
3. As to estates tail of bankrupt copyholders.

VII. *Of devises of copyholds.*

1. What would have constituted a valid will of copyholds.
2. Operation of surrender to the use of will.
3. When equity would have supplied a surrender.
4. Operation of statute 55 Geo. 3, c. 192, on wills of copyholds.
5. Alterations effected by recent enactments.

VIII. *Ancient demesne.*
IX. *Customary lands of the ancient duchy of Cornwall.*

CHAP. IX.

ON INCUMBRANCES.

I. *Of the various kind of incumbrances.*

1. Incumbrances which are matters of title.
2. Incumbrances which are matters of conveyance only.

II. *Of protection against prior and intermediate estates and incumbrances.*

1. Protection at law.
2. Protection in equity.
3. Of notice.

CHAP. X.

INTERMEDIATE PROCEEDINGS FROM THE PERUSAL OF THE ABSTRACT TO THE COMPLETION OF THE PURCHASE.

I. *Of clearing up and perfecting the title.*
II. *Of the search for incumbrances.*
III. *Of indemnity against incumbrances.*

CHAP. XI.

INDEMNITY BY INSURANCE OF TITLE.

CHAP. XII.

OF THE PURCHASE DEEDS.

I. *General practical observations.*

Of the various modes of conveyance.

II. *Practical directions for preparing the conveyance.*

1. Of the date.
2. Parties.
3. Recitals.
4. Testatum and granting clause.
5. Parcels and general words.
6. Exceptions.
7. Habendum.
8. Limitation of uses.
9. Covenants.

III. *Assurances of copyholds.*
IV. *Assignments of leaseholds.*
V. *How mixed assurances should be made.*
VI. *How the assurance should be prepared where a mortgage and purchase are contained in the same instrument.*
VII. *Disentailing assurances.*
VIII. *Of the execution and attestation.*
IX. *Costs.*

CHAP. XIII.

REMEDIES FOR BREACH OF CONTRACT.

I. *When the contract may be rescinded.*
II. *Remedies for breach of contract at law.*

1. As to the vendor.
2. As to the purchaser.

III. *Remedies in equity.*

CHAP. XIV.

NEW ORDERS FOR REGULATING THE PRACTICE OF THE COURT OF CHANCERY.

CHAP. XV.

PRACTICAL OBSERVATIONS ON THE STAMP DUTIES ON CONVEYANCES.

I. *Preliminary remarks.*
II. *Agreements.*
III. *Conveyances and deeds in general.*
IV. *Leases.*
V. *Mortgages, bonds, warrants of attorney, &c.*
VI. *Settlements.*
VII. *Comparative table of old and new stamp duties on conveyances, leases, bonds, mortgages, warrants of attorney, and settlements.*

ADDENDA.

THE LEASES AMENDMENT ACT (12 VICT. c. 17.)

THE TRUSTEE ACT (13 & 14 VICT. c. 60.)

APPENDIX.

PRECEDENTS OF FORMS OF PURCHASE-DEEDS.

No. I.

Conveyance by appointment, grant and release to uses to bar dower.

1. Parties.
2. Recital of conveyance to vendor.
3. Of contract to purchase.
4. Testatum by which vendor appoints.
5. Further testatum by which vendor grants and releases.
6. Habendum to dower uses.
7. Declaration to debar purchaser's widow from dower.
8. Covenants from vendor, for title.
9. For quiet enjoyment.
10. Freedom from incumbrances.
11. For further assurance.

No. II.

Appointment to a purchaser to dower uses, with usual covenants and title.

1. Parties.
2. Testatum, vendor appoints.
3. Declaration of dower uses.
4. Covenants from vendor for title, that power is still subsisting.
5. That vendor has good right to appoint.
6. For quiet enjoyment and freedom from incumbrances.
7. For further assurance.

No. III.

Conveyance by grant and release to a purchaser in fee, with the usual covenants for title.

1. Parties.
2. Testatum by which vendor grants and releases.
3. Habendum to purchaser in fee.
4. Declaration to debar widow of dower.
5. Covenant from vendor that he has good right to convey.
6. For quiet enjoyment, and freedom from incumbrances.
7. For further assurance.

No. IV.

Conveyance by a vendor (mortgagor), and his mortgagee, to a purchaser; the former conveying the fee, and the latter surrendering a term of years vested in him under the mortgage-deed.

1. Parties.
2. Recital of mortgage by demise.
3. That principal is still due, but that all interest has been paid.
4. Of contract to purchase.
5. Testatum.
6. Habendum to purchaser in fee.
7. Covenant from mortgagee that he has done no act to incumber.

No. V.

Conveyance of an equity of redemption, the purchaser covenanting to indemnify the vendor from the mortgage.

1. Parties.
2. Recital of mortgage in fee.
3. That principal is still due, but that all interest has been paid.
4. Of contract to purchase.
5. Testatum.
6. Habendum to purchaser in fee subject to mortgage.
7. Usual covenants from vendor that he has good right to convey.
8. For quiet enjoyment.
9. Freedom from incumbrance.
10. For further assurance.
11. Covenant from purchaser to discharge the mortgage.
12. To indemnify vendor from mortgage.
13. Declaration that mortgage shall be deemed the debt of the purchased premises.

No. VI.

Conveyance by mortgagor and mortgagee to a purchaser in fee, the mortgagor entering into the usual qualified covenants for title. Variation where the original mortgage is for a term.

1. Parties.
2. Recital of mortgage.
3. That principal is still due, but that all interest has been paid.
4. Of contract to sell.
5. Testatum.
6. Habendum to dower uses.
7. Declaration to debar widow of dower.
8. Covenant from mortgagor that he has done no act to incumber.
9. Covenant from mortgagor that he has good right to convey.
10. For quiet enjoyment, and freedom from incumbrances.
11. For further assurance.

No. VII.

Conveyance and mortgage by the same instrument where part of the purchase-money is to remain on mortgage.

1. Parties.
2. Recital of intended purchase, and of agreement that part of purchase-money is to remain on mortgage.
3. Testatum.
4. Habendum to purchaser, to the use of vendor.
5. Proviso for redemption and reconveyance on payment of principal and interest.
6. Power of sale.
7. Proviso that power of sale shall not debar vendor from his remedies by foreclosure.
8. That purchaser shall enjoy until default.
9. That vendor will not exercise power of sale without giving six months previous notice.
10. Covenants from purchaser to pay mortgage-money and interest, and in the meantime to pay interest half-yearly, with general covenants for title.
11. Proviso, that if power of sale shall be exercised, purchaser, on concurring in conveyance, and entering into usual qualified covenants, to be released from absolute covenants previously entered into.

No. VIII.

Conveyance in fee of the equity of redemption from mortgagor to the mortgagee, to uses to bar dower.

1. Parties.
2. Recital of mortgage by appointment.

3. Of contract to purchase equity of redemption.
4. Testatum.
5. Habendum to mortgagee's trustee to dower uses for the benefit of the mortgagee.

No. IX.

Conveyance by husband and wife to a sub-purchaser, the wife concurring to extinguish her dower.

1. Parties.
2. Recital of original contract.
3. Of contract with sub-purchaser.
4. Of request to vendor to convey.
5. That wife being entitled to dower will release the same.
6. Testatum.
7. Covenant from vendor that the deed shall be duly acknowledged.
8. Usual covenants for title.

No. X.

Memorandum of acknowledgment to be indorsed on deed.

No. XI.

Certificate of acknowledgment to be engrossed on a separate piece of parchment.

No. XII.

Conveyance by heir and executor of a deceased mortgagee, and the owner of the equity of redemption, to a purchaser to uses to bar dower.

1. Parties.
2. Recital of death of mortgagee, his will, and appointment of executors.
3. Of probate of will.
4. Of contract to purchase.
5. That principal is still due, but that all interest has been paid.
6. Testatum.
7. Heir and executors covenant that they have not incumbered.

No. XIII.

Conveyance of an undivided moiety of freehold by a tenant in common to a purchaser.

1. Parties.
2. Recital of deceased testator's will devising parcels to purchaser.

3. Of contract to purchase.
4. Testatum.
5. Habendum to purchaser in fee.

No. XIV.

Conveyance by two tenants in common, one of whom is a married woman, and whose husband concurs with her in the conveyance, to a purchaser to uses to bar dower.

1. Parties.
2. Recital that deceased testator was seised of the premises at the time of making his will.
3. Of death of testator, and of probate of his will.
4. Recital of contract to purchase.
5. Testatum.

No. XV.

Conveyance in fee by a mortgagor to a purchaser under a power of sale, in which the mortgagor does not concur.

1. Parties.
2. Recital of mortgage and power of sale.
3. That default was made in payment, and that principal and an arrear of interest are still due.
4. Of contract to sell.
5. Testatum.
6. Habendum to purchaser in fee.
7. Covenant from mortgagee that he has done no act to incumber.

No. XVI.

Conveyance by the heir and personal representative of a vendor, who died pending the contract, to a purchaser to dower uses, and covenant to produce title-deeds.

1. Parties.
2. Recital of contract to purchase.
3. Of death of vendor before executing conveyance.
4. Testatum.
5. Recital that title-deeds relate as well to other lands of greater value descended on heir.
6. Covenant by the heir to produce the deeds.

No. XVII.

Covenant to produce title-deeds contained in a distinct deed from the conveyance.

1. Parties.
2. Recital of purchase by covenantee.

3. That title-deeds relate as well to the title of hereditaments of greater value conveyed by vendor to covenantor.
4. Covenant from covenantor to produce title-deeds and other documents.

No. XVIII.

Conveyance by the assignees of a bankrupt to a purchaser in fee, to uses to bar dower; a mortgagee in fee concurring to convey the legal estate, and the bankrupt, for the purpose of entering into covenants for title, &c.

1. Parties.
2. Recital of mortgage in fee.
3. Of further charge.
4. Of fiat in bankruptcy and appointment of assignees.
5. Of contract for purchase.
6. That principal, and also an arrear of interest, is still due.
7. That bankrupt will concur in conveyance.
8. Testatum.
9. All-estate and all-deeds clause.
10. Covenants from mortgagee and assignees that they have done no act to incumber.

No. XIX.

Conveyance by the executors and infant heir of a deceased mortgagee, under an order of the Court of Chancery, the mortgagor concurring, and entering into covenants for title.

1. Parties.
2. Recital of minority of heir and order of court.
3. Testatum.

No. XX.

Conveyance by four of five co-heiresses, three of whom are married, one single, and the remaining one an infant, with a covenant that the latter shall convey when of age; a proportionate part of the purchase-money to be retained in the meantime by the purchaser.

1. Parties.
2. Recital of death of ancestor intestate, whereupon parcels descended upon his daughters as co-heiresses.
3. Of contract to purchase, and of inability of infant to concur on account of her minority.
4. Testatum.
5. Habendum.
6. Covenants for title
7. That infant shall convey upon coming of age.
8. Covenant to acknowledge deed.

9. Covenant from purchaser to pay the remainder of the purchase-money, on infant's executing conveyance.

No. XXI.

Conveyance by trustees under a power of sale contained in a will, the heir and legatees concurring.

1. Parties.
2. Recital that testator had devised to trustees upon trust to sell.
3. Of testator's death and probate of his will.
4. Of contract to purchase.
5. Testatum.

No. XXII.

Conveyance by tenant in tail with consent of protector, for the purpose of barring an entail prior to a conveyance.

1. Parties.
2. Testatum by which tenant in tail, with consent of protector, conveys, &c.
3. Habendum to releasee, to uses, &c.

No. XXIII.

Consent of protector by a distinct deed, enabling the tenant in tail to bar the estate tail and remainders.

1. Recital of settlement creating the entail.
2. That tenant in tail and protector are desirous of barring entail.
3. Protector declares consent.

No. XXIV.

Conveyance by father, tenant for life, and his son, tenant in tail remainder to a purchaser, to uses to bar dower.

1. Parties.
2. Recital of contract.
3. Testatum.
4. Covenant from vendors that they have good right to convey.
5. For quiet enjoyment.
6. Freedom from incumbrances.
7. For further assurance.

No. XXV.

Conveyance by heir in tail without the consent of the protector, with a covenant to perfect the title at a future period.

1. Parties.
2. Recital of will creating the entail.

3. Of testator's death, whereby protector became seised for life, with remainder to his first and other sons successively in tail.
4. That vendor is first tenant in tail in remainder expectant on protector's life estate.
5. Of contract to sell.
6. Testatum.
7. Habendum to purchaser in fee.
8. Covenant from tenant in tail that he is entitled to premises as tenant in tail in remainder.
9. That he has good right to convey.
10. For quiet enjoyment and freedom from incumbrances.
11. For further assurance.
12. Covenant to perfect title at a future period.

No. XXVI.

Further assurance in pursuance of the covenant contained in the last precedent.

1. Parties.
2. Recital of conveyance of base fee by tenant in tail.
3. Recital of death of protector.
4. Of consent of tenant in tail to perfect assurance.
5. Testatum, by which tenant in tail perfects title.
6. Habendum to purchaser, discharged of all estates tail, &c.
7. Covenant from tenant in tail, that he has done no act to incumber.

No. XXVII.

Conveyance by tenant in tail in possession to a purchaser in fee, his wife concurring to bar her dower.

1. Parties.
2. Recital of death of tenant of preceding particular estate.
3. Recital of contract.
4. Testatum, by which tenant in tail conveys, and his wife releases her claim.

No. XXVIII.

Grant for the purpose of effecting an exchange, where consideration money is paid for owelty of exchange.

1. Parties.
2. Recital of conveyance of property intended to be given in exchange.
3. Recital of conveyance of premises intended to be taken in exchange.
4. Recital of contract to exchange.
5. Testatum whereby premises are granted in exchange.
6. Habendum in exchange in fee.

No. XXIX.

Assignment of leasehold premises held for a term of ninety-nine years absolute to a purchaser, with usual covenants.

1. Parties.
2. Recital of original demise.
3. Of mesne assignment.
4. Of contract to purchase.
5. Testatum.
6. Habendum for residue of term.
7. Covenant for title from vendor that lease is a valid lease, and that vendor has good right to assign.
8. That all rents have been paid and convenants performed.
9. That, subject to rents and covenants, purchaser shall quietly enjoy, free from incumbrances.
10. For further assurance.
11. Covenant from purchaser to indemnify vendor from covenants contained in the lease.

No. XXX.

Assignment of leasehold premises determinable on lives.

1. Parties.
2. Recital of lease.
3. Of contract to purchase.
4. Testatum.
5. Habendum.

No. XXXI.

Enfranchisement of a copyholder by the lord, with usual covenants, and covenant to produce title-deeds.

1. Parties.
2. Recital of admittance of copyholder.
3. Of agreement to enfranchise.
4. Testatum.
5. Habendum, discharged of all rents, suits and services.

No. XXXII.

Covenant to surrender copyhold to a purchaser in fee, with usual covenants for title.

1. Parties.
2. Recital of contract to sell.

3. Testatum, by which vendor covenants to surrender to purchaser, and in the meantime to hold in trust for him.
4. Covenants from vendor for title.
5. For quiet enjoyment, and freedom from forfeitures and incumbrances.
6. For further assurance.

No. XXXIII.

Deed to accompany a previous surrender of copyholds.

1. Parties.
2. Recital of contract to purchase.
3. That vendor should enter into covenants for title.
4. Covenant by vendor for title.

No. XXXIV.

Covenant to surrender copyholds for lives.

1. Parties.
2. Recital that copyholder was admitted tenant.
3. Of contract to purchase.
4. Testatum, by which vendor covenants to surrender to purchaser's use.
5. Habendum.

No. XXXV.

Conveyance of freehold estates of inheritance, and for lives; assignment of leaseholds; and covenants to surrender copyholds of inheritance to a purchaser.

1. Parties.
2. Recital that vendor is seised in fee of freeholds of inheritance.
3. That leasehold premises for lives were conveyed to vendor.
4. Of original demise of leaseholds for years.
5. Of admission of vendor to copyholds
6. Of contract to purchase.
7. Testatum.
8. Habendum, freeholds of inheritance to dower uses.
9. Habendum, leaseholds for residue of lives.
10. Habendum, leaseholds for years for residue of term.
11. Covenant from vendor to surrender copyholds.
12. Covenants from vendor that he has good right to grant, assign, and surrender.
13. For quiet enjoyment and freedom from incumbrances.
14. For further assurance.

No. XXXVI.

Conveyance of freeholds, where both freeholds and copyholds have been purchased, and the purchase-money is apportioned for the purpose of saving stamp duty.

1. Parties.
2. Recital of contract to purchase.
3. Of intention to apportion purchase-money.
4. Testatum.

No. XXXVII.

Conveyance in fee of an advowson.

1. Parties.
2. Recital that vendor seised in fee has contracted to sell.
3. Testatum.
4. Covenants for title.

No. XXXVIII.

Grant of the next presentation to an advowson.

1. Parties.
2. Recital of contract.
3. Testatum.
4. Habendum.

No. XXXIX.

Conveyance of copyholds of inheritance by a mortgagor and mortgagee to a purchaser in fee.

1. Parties.
2. Recital of covenant to surrender copyholds to mortgagee's use.
3. That surrender was afterwards duly made.
4. That default was made in payment, but that mortgagee has not been admitted tenant.
5. Of contract to sell.
6. That the original mortgage debt has been considerably reduced by subsequent payments.
7. Testatum, mortgagee covenants to surrender to purchaser.
8. Habendum to purchaser in fee.
9. That until surrender mortgagee will stand possessed in trust for purchaser.
10. Covenant from mortgagee that he has done no act to incumber.
11. Further testatum by which mortgagor releases equity of redemption.
12. Habendum to purchaser in fee.
13. Covenant from mortgagor that mortgagee has good right to surrender, and mortgagor to release and confirm.

14. For quiet enjoyment and freedom from incumbrances.
15. For further assurance.

No. XL.

Conveyance in fee to a purchaser of freehold property charged with an annuity, the annuitant on receiving a portion of the purchase-money concurring to release her interest. Variation where the annuitant concurs without receiving any consideration.

1. Parties.
2. Recital of will creating annuity, and devising premises to vendor.
3. Of death of testator, and probate of his will.
4. Of contract to sell.
5. That annuity still remains charged on premises, and that annuitant has agreed to concur in conveyance for the purpose of releasing the same.
6. Testatum, by which vendor conveys.
7. Habendum to purchaser in fee.
8. Further testatum, by which annuitant releases annuity.
9. Covenant from annuitant that premises shall be held discharged of annuity.
A. Substituted clause, where the annuitant concurs without receiving any consideration.

No. XLI.

Re-grant of an annuity charged upon real estate, which had been extinguished by the annuitant concurring in a release of part of the lands out of which it was payable.

1. Parties.
2. Recital of deed by which part of the lands charged with annuity are conveyed to purchaser.
3. Testatum, by which the owner of the lands regrants the annuity to be issuing out of the remaining real property.
4. Power of distress.

No. XLII.

Conveyance in fee of property charged with an annuity of 100*l. per annum, the vendor undertaking to convey another estate to trustees by way of indemnity against the incumbrance.*

1. Parties.
2. Recital of settlement, by which a rent-charge of 100*l.* was limited to the vendor's mother for life, and the lands to vendor's father for life, with remainder to trustees, to preserve, &c., with remainder to his first and other sons in tail male general.
3. Of death of father, leaving his widow, and vendor, his heir in tail, him surviving.

4. Of disentailing deed, by which vendor barred the entail.
5. Of agreement to purchase.
6. That the premises so sold forming part of the lands charged with the rent-charge of 100*l.*, vendor had agreed to convey other lands by way of indemnity.

No. XLIII.

Conveyance in fee to trustees for the purpose of indemnifying a purchaser against a rent-charge charged upon other property sold and conveyed to him by the present grantor.

1. Parties.
2. Recital of conveyance to purchaser.
3. Testatum, by which vendor conveys to trustees.
4. Habendum to uses thereinafter declared.
5. Trustees to receive rent-charge payable quarterly.
6. Power of distress.
7. Power of entry.
8. Ultimate use to vendor.
9. Declaration that rent-charge is so limited as an indemnity against the rent-charge charged upon the purchased premises.

No. XLIV.

Conveyance of a remainder in fee, limited by way of executory devise, to a purchaser, to uses to bar dower, in consideration of stock to be invested in the names of trustees, to be transferred to the vendor upon his contingent estate becoming vested, or to be transferred to the purchaser in case of its failing to take effect.

1. Parties.
2. Recital of will whereby testator devises to wife, subject to limitation over.
3. Of death of testator, and probate of his will.
4. Recital that testator's daughter is unmarried, and of advanced age.
5. Recital of contract to purchase in consideration of £ Three per Cent. Reduced Annuities, to be invested in the names of trustees.
6. Testatum.
7. Habendum to dower uses.
8. Declaration to debar widow of dower.
9. Covenant from vendor that he has good right to convey.
10. For quiet enjoyment, and freedom from incumbrances.
11. For further assurance.
12. Declaration that trustees shall stand possessed of stock, upon trust to pay dividends.
13. To vendor during the lifetime of testator's daughter, and, in case of her death in his lifetime, to transfer stock to vendor; but in case vendor shall die in testator's daughter's lifetime, or, surviving her, shall die in the lifetime of any of her issue, then

14. Upon trust for purchaser absolutely.
15. Power to vary securities.
16. Trustees' receipts to be sufficient discharges.
17. Power to change trustees.

No. XLV.

Conveyance to a purchaser in fee to dower uses by tenant for life and remainder man, with the concurrence of the mortgagee, part of the consideration being a rent-charge limited to the tenant for life, with usual powers for securing the payment thereof.

1. Parties.
2. Recital of disentailing deed.
3. Of mortgage by appointment.
4. Of contract to sell.
5. That principal money is still due upon the mortgage security, but that all interest has been punctually paid.
6. Testatum.
7. Habendum to purchaser's trustee.
8. To the use and for the intent that tenant for life shall receive a yearly rent-charge of 150*l.* for life.
9. Power of distress.
10. Power of entry.
11. Limitation to trustee for tenant for life for ninety-nine years, if tenant for life shall so long live.
12. Limitations to dower uses.
13. Declaration of trustee of term to secure annuity.
14. Receipt of trustee to be a sufficient discharge.
15. Covenant from purchaser to pay rent-charge.
16. Covenant from tenant for life and remainder man that they have good right to convey.
17. For quiet enjoyment, and freedom from incumbrances.
18. For further assurance.
19. Covenant from mortgagee that he has done no act to incumber.

No. XLVI.

Declaration from a vendor that the property is unincumbered, and that he has done no act to incapacitate him from selling the property.

INDEX TO CASES.

GENERAL INDEX.

THE

PRACTICE OF SALES

OF

REAL PROPERTY.

CHAPTER VIII.

TITLES OF COPYHOLD AND CUSTOMARY ESTATES.

I. Properties incidental to Copyhold and Customary Estates.

II. Custom.

1. *Requisites to constitute.*
2. *Evidence of Custom.*
3. *Must have existed from Time immemorial.*
4. *Rules of Descent, how governed by the Custom.*

III. Alienation of Copyholds.

1. *Copyholds pass by Surrender and Admission.*
2. *Operation of Surrender.*

3. *Presentment.*
4. *What Estate passes by Surrender.*
5. *Admission.*
6. *Of the Declaration of Uses.*

IV. Tenant Right of Renewal.

V. Of Conditional Fees.

VI. Estates Tail in Copyholds.
1. *Old Mode of barring Entails.*
2. *Modern Mode of barring Entails.*
3. *As to Estates Tail of Bankrupt Copyholders.*

VII. Of Devises of Copyholds.
1. *What would have constituted a valid Will of Copyholds.*
2. *Operation of Surrender to the Use of Will.*
3. *When Equity would have supplied a Surrender.*
4. *Operation of Statute* 55 *Geo.* 3, *c.* 192, *on Wills of Copyholds.*
5. *Alterations effected by recent Enactments.*

VIII. Ancient Demesne.

IX. Customary Lands of the Ancient Duchy of Cornwall.

I. Properties incidental to Copyhold and Customary Estates.

Estate of copyholder considered,

A copyholder being in the eye of the law merely a tenant at will, he had no interest which

Properties incidental to estates.

and how transferrable.

he could transfer to another; all he could do was to relinquish his own right to the property. When, therefore, he was desirous of passing his estate to a third party, he surrendered the premises into the hands of the lord, under confidence that the latter would regrant them to the person he himself should name, until, in course of time, this mode of alienation became so well established, that if the lord refused to grant them after accepting such resignation under such confidence, a court of equity would have enforced the trust: (Wat. Cop. 50.)

Descents of copyholds.

By custom also copyholds became descendible, and governed by the same rules as the descent of estates of freehold: (Co. Cop. s. 50; *Brown's case*, 4 Co. 22, a; *Brown* v. *Dyer*, 11 Mod. 98; S. C. Holt, 165.) But as copyholds are not within the statute *de donis* (Cary, 30; Sav. 67; *Rowden* v. *Malster*, Cro. Car. 42), it seems doubtful whether they can be entailed, unless there is a special custom in the manor to warrant it; in the absence of which, the better opinion seems to be, that a limitation in terms that would create an estate tail in freeholds, will create a fee-simple conditional in copyholds: (Scriv. Cop. 67, *et seq.*; *Heydon's case*, 3 Co. 8; *Margaret Podger's case*, 9 Co. 105; *Bulleyn and Grant's case*, 1 Leon. 175; *Warne* v. *Sawyer*, 1 Roll. Rep. 48; *Gravenor* v. *Brook*, Poph. 33; S. C. by the name of *Gravenor* v. *Rake*, Cro. Eliz. 307; *Lee* v. *Brown*, Poph. 128; *Erish* v. *Rives*, Cro. Eliz. 717; *Hastings and Grey*, cited, *ib.*; *Taylor* v. *Shaw*, Carth. 22; S. C. 1 Sid. 268; *Roe dem. Crowe* v. *Baldwere*, 5 T. R. 104; *Moore* v. *Moore*, 2 Ves. 601; S. C. Ambl. 279.)

Freebench.

Neither is the widow of a copyholder dowable except by custom, and the interest she thus takes is styled her freebench; the quantity and duration of which will be regulated by the custom of

CHAP. VIII.

Properties incidental to estates.

the manor. She does not acquire this right by her marriage, as in the case of dower of freeholds, for she is entitled to freebench only in the event of her husband's dying seised (*Brown's case*, 4 Co. 22; *Benson* v. *Scott*, 4 Mod. 251; 12 *ib.* 49; S. C. Carth. 275; *Walter* v. *Bartlett*, 2 Roll. Rep. 179; *Howard* v. *Bartlett*, Hob. 181; *Waldoe* v. *Bertlet*, Cro. Jac. 573; *Parker* v. *Bleeke*, Cro. Car. 568; *Goodwyn* v. *Winsmore*, 2 Atk. 526); consequently, this right may be defeated by a disposition by her husband in his lifetime: (*Benson* v. *Scott*, 4 Mod. 251; 12 *ib.* 49; S. C. Carth. 275; *Sutton* v. *Stone*, 2 Atk. 101.) And any act of his for a valuable consideration will have this operation equally with a legal surrender: (*Hinton* v. *Hinton*, 2 Ves. 631; S. C. Amb. 454; *Brown* v. *Raindle*, 3 Ves. 356.) Freebench will also be destroyed by the bankruptcy (*Parker* v. *Bleeke*, Cro. Car. 568); as also by the forfeiture of the husband's estate: (*Allen* v. *Brach*, Winch. 27; *Roe* v. *Hicks*, 2 Wils. 13.) Neither will a widow be entitled to free-bench out of the trust of the copyhold estate: (*Forder* v. *Wade*, 4 Bro. C. C. 521.) Her title to freebench will also be defeated by a surrender of the husband to the use of his will (*Forder* v. *Wade and others*, 4 Bro. C. C. 251); but a devise by an unsurrendered will would not have produced this result; neither, it seems, has the statute 55 Geo. 3, c. 192, which dispenses with a surrender to the uses of a will, made any alteration in the law in this respect, as that statute only supplies a defect in form, and not in substance: (*Doe dem. Nethercote* v. *Bartle*, 5 B. & A. 492; 1 Dow. & Ry. 81; but see *Doe dem. Clarke* v. *Ludlam*, 5 Moo. & Pay. 48; 7 Bing. 275.) And it has been clearly determined, that a devise, which by the special custom of some few manors was good without a surrender, even before the statute above referred to, did not defeat

Properties incidental to estates.

the widow of her freebench; for in those instances the devisee took, not by the surrender, but by the will; and, consequently, after the wife's right had attached: (Scriv. Cop. 91; see also *Forder* v. *Wade*, 4 Bro. C. C. 521.) Still, it seems, that under the provisions of the late Dower Act (3 & 4 Will. 4, c. 105), and the more recent Will Act (1 Vict. c. 26, s. 4), a husband is empowered to defeat his wife's title to her freebench, by a will to the uses of which no surrender has been previously made. A jointure before marriage in lieu of dower, or thirds out of any lands of freehold or inheritance, will be an equitable bar to her claim of freebench: (*Walker* v. *Walker*, 1 Ves. 54.) Yet it must be remembered, that all these general customs may vary, and bend to special customs within the manor to the contrary.

Curtesy.

Curtesy, like freebench in copyholds, cannot exist except by custom; and by that custom must its extent and duration also be governed: (*Ever* v. *Aston*, Mo. 271; S. C. 1 And. 192, by the name of *Ewer* v. *Astwicke*.) Mr. Watkins, in his valuable treatise on copyholds, seems to have considered that where the custom does not expressly require that there should be issue, the birth of issue is not essential to give the husband a title. But a modern writer of high authority expresses a strong opinion that, when curtesy is allowed, if the custom is silent with respect to the issue, the rule of common law would prevail: (See Scriv. Cop. 98.) It seems, however, that where, by the custom of a manor, the husband is entitled to curtesy, he will be so entitled, although the wife die before admittance: (*Doe dem. Milner* v. *Brightwen*, 10 East, 583; see also Gilb. Ten. 288.)

Judgments.

Copyholds were not formerly liable to simple contract, or even specialty debts, and therefore were unaffected by judgments (*Drury* v. *Man*,

CHAP. VIII.

Properties incidental to estates.

1 Atk. 95; *Rex* v. *Lisle*, Park. 195; Lex Cust. 19; *Morris* v. *Jones*, 2 B. & C. 242; S. C. 3 Dow. & Ry. 603; see also *Cannon* v. *Pack*, 2 Eq. Ca. Abr. 226; see also Scriv. Cop. 60; *Rex* v. *Budd*, Park. 190; *Parker* v. *Dee*, 2 Cha. Cas. 201; *Robinson* v. *Tonge*, 1 P. Wms. 680, n.; *Aldrick* v. *Cooper*, 8 Ves. 388; 394), yet they might have been taken under a sequestration from a court of equity (*Colston* v. *Gardner*, 2 Cha. Cas. 46; 3 Swanst. 279, 282, n.; *Caermarthen* (*Marquess of*) v. *Hawson*, *ib.* 294, n.; *Dunkley* v. *Scribnor*, 2 Mad. 444); but now under the recent enactment (1 & 2 Vict. c. 110), judgments are made a charge upon copyholds in like manner as they are thereby also made chargeable upon freehold estates; a subject I shall treat more fully upon hereafter.

Copyholder cannot grant leases without licence from the lord.

A copyholder, we have already seen, is unable to grant leases without the licence of the lord: (vol. 1, p. 190.) And being impeachable for waste, he is also disabled from opening mines or cutting down timber.

SECTION II.

CUSTOM.

1. *Requisites to constitute.*
2. *Evidence of Custom.*
3. *Must have existed from Time immemorial.*
4. *Rules of Descent, how governed by the Custom.*

1. *Requisites to constitute.*

Customs.

In investigating the titles of copyhold property, the custom of the manor oftentimes becomes a most important question; for upon this the very origin of the grant must frequently depend, as must also the course by which the property is to be transmitted from one party to another. In order that a custom may be good:—1. It must have existed time out of memory: (*Kempe* v. *Carter*, 1 Leon. 56; Co. Litt. 58; *Jackman* v. *Hoddeston*, Cro. Eliz. 351; *Rex* v. *Inhabitants of Wilby*, 2 M. & Selw. 509.) 2. It must be reasonable: (Scriv. Cop. 28; Wat. Cop. 54; *Badger* v. *Ford*, 3 B. & A. 155; *Arlett* v. *Ellis*, 7 B. & C. 365.) 3. It must be certain: (*ib.*, and see Co. Cop. s. 33.) 4. It must be compulsory: (Wat. Cop. 560.) And, 5. It must not be inconsistent with another custom, though it may be subservient to another's right: (*Bateson* v. *Green*, 5 T. R. 411.) It must always be remembered, that if any part of a custom be bad, it avoids the whole: (*Wilkes* v. *Broadbent*, 2 Str. 1225.)

2. *Evidence of Custom.*

Proof of custom generally rests with the party alleging it.

With the exception of the general customs of gavelkind and borough English, which are noticed by the law (Rob. Gav. b. 1, c. 3, p. 38; Co. Litt. 110, 175, b; Dy. 196), the proof of all customs rests with him who alleges it: (Wat. Cop. 58; Scriv. Cop. 32; *Clements* v. *Scudamore*, 1 Salk. 243.) And it will not be sufficient for him to prove merely that such a custom exists; for he must also show that the lands in question are within and subject to that custom: (*Roberts* v. *Young*, Hob. 286.) The best and most direct evidence of a custom is that of a series of entries on the court rolls (Wat. Cop. 58); and, indeed, a single entry has been admitted as sufficient evidence as to a descent (*Doe dem. Mason* v. *Mason*, 3 Wils. 63), although, as a general rule, one undisturbed act does not create a custom. It may be evidence of a custom, but it will not create one: (*Roe dem. Jeffery*, 2 M. & Selw. 92.) So an ancient presentment by the homage of the custom entered upon the rolls, though no instance was adduced of any person having taken under it (*Roe dem. Beebee* v. *Parker*, 5 T. R. 26), and an ancient writing purporting to be such presentment or customary of the manor, delivered down with the court rolls from steward to steward, though never entered on the rolls, nor signed by any one, has been received. Still in all cases of custom, as many instances as possible of its having been acted upon should be produced: (Peake Ev. 460.) When a doubt prevails as to the existence of a custom, it must be tried by a jury of the county in which the manor or place wherein it is alleged is situate, and not by judges; except the same particular custom has been before tried, determined, and recorded in the same court: (1 Black. Com. 76; Wat. Cop. 56, 57; Scriv.

Cop. 32; and see *Mortimer* v. *Petifer*, Cro. Jac. 302; *Jewell* v. *Horwood*, 1 Roll. Rep. 263; *Edwin* v. *Thomas*, 2 Vern. 75.) By the consent of all parties, however, a court of equity will order a reference to the master: (*Edwards* v. *Fidell*, 3 Mad. 239.) The customs of one manor cannot be received in evidence to prove or explain the customs of another (*Somerset* (*Duke of*) v. *France*, 1 Str. 659; *Ely* (*Dean and Chapter of*) v. *Warren*, 2 Atk. 189; *Roe* v. *Parker*, 5 T. R. 30; Wat. Cop. 59); unless in the case of an usage which is common to a whole county or district; as that of the border laws (5 T. R. 31), or the customs of miners (2 Atk. 189); though these last are properly the customs of such county or district, rather than of the particular manor in question, *as that particular manor:* (Wat. Cop. 59.)

3. *Must have existed from Time immemorial.*

Copyholds cannot be created at the present day.

A copyhold estate cannot be created at the present day, because the custom, which constitutes the very life and soul of copyhold tenure, must have existed from time immemorial. By custom, however, a lord of a manor, with consent of the homage, may make new grants of waste land, parcel of the manor, to hold by copy of court roll (*Northwick* (*Lord*) v. *Stanway*, 3 Bos. & Pull. 347); and such a custom is recognized by stat. 4 & 5 Vict. c. 91: (Co. Litt. 58; *Kempe* v. *Carter*, 1 Leon. 56; *Revell* v. *Jodrell*, 2 T. R. 415.)

Lord may regrant to be holden by copy lands which come to him by escheat.

Where a copyhold estate escheats to, or is surrendered into, the hands of the lord, he may regrant it to be held by copy of court roll: nor is it necessary that the regrant should be made immediately; for the lord may, if he pleases, regrant the lands, even after a period of twenty years: (Co. Litt. 58.) But if the demesnes are

CHAP. VIII.

Custom.

once separated from the manor, so that the custom is destroyed, as, if the lord once grant a common-law interest for life, or years, the copyhold property is destroyed for ever: (*French's case*, 4 Co. 31, and *Downcliffe* v. *Minors*, 1 Roll. Abr. 498, B.; *Lee* v. *Boothby*, Cro. Car. 521; *Badger* v. *Ford*, 3 Barn. & Ald. 155.) But if, on the premises coming into the hands of the lord, he regrants them to hold by copy, the custom of the manor again attaches and prescribes its extent with respect to the estate of the tenant. For the lord cannot exceed the limits prescribed by the custom; still for all this he may grant for a less, though he cannot grant for a greater, estate: (Co. Cop. s. 41, Tr. p. 90.) Thus, for example, if the custom warrants him to grant in fee-simple, he may grant to one and the heirs of his body, or he may grant to one for life, for years, or any lesser estate: (Co. Litt. 52, b; Co. Cop. s. 33, Tr. 65; *Bullock* v. *Dibley*, Co. Litt. 52, b; *Stanton* v. *Barnes*, Cro. Eliz. 373.) So where by the custom of a manor the lord can grant a copyhold for three lives, he may grant it for one, for two, or for the three lives (*Smartle* v. *Penhallow*, 2 Lord Raym. 994; S. C. 1 Salk. 188); but if the custom be to grant for one life, a grant to two jointly is not good, though it be in effect but for one of two lives: (*Gravenor* v. *Ted*, 4 Co. 23, a; S. C. by name of *Gravenor* v. *Brook*, Poph. 33; S. C. by name of *Gravenor* v. *Rake*, Cro. Eliz. 307.) The lord may, however, grant to a woman during widowhood under a custom to grant for life, that being in fact a lesser interest than a life estate: (*Down* v. *Hopkins*, 4 Co. 296.) There are in some manors both copyholds of inheritance and for lives (*Kempe* v. *Carter*, 1 Leon. 56); and such a custom is good; but a grant of the latter, for lives, with a remainder in fee, would be void as to the remainder: (Kitch. 170; Scriv. Cop. 122.)

Regrant must be in accordance with pre-existing custom.

As immediately upon the regrant being made the tenant is in by the custom, it is not necessary that the estate of the lord should be commensurate with that of the tenant: hence the lord of a manor that hath a lawful estate therein, whether he be tenant for life or years, or even a mere tenant at will, may regrant a copyhold estate to be holden in fee-simple, and the grantee being in under the custom, his title will be paramount to the interest of the granting lord. For this cause, also, the estate so granted to be held by copy shall not be subject to his charges or incumbrances: (Wat. Cop. 45; *Swane's case*, 8 Co. 63; *Podger's case*, 9 Co. 107; *Sammer* v. *Force*, 2 Browl. 208; *Cham* v. *Dover*, 1 Leon. 16; *Westmoreland's* (*Earl of*) *case*, 3 Leon. 59; *Sneyd* v. *Sneyd*, 1 Atk. 442.)

It is not requisite that the estate of the lord should be commensurate with the tenant's interest.

4. *Rules of Descent, how governed by the Custom.*

Descents.

In the absence of a custom to the contrary, copyholds of inheritance will descend in the same course as freeholds; yet, by custom, they may be transmissible in a different course (*Brown* v. *Dyer*, 11 Mod. 28; *Roe dem. Crowe* v. *Baldwere*, 5 T. R. 105; *Goodwin* v. *Spray*, 1 T. R. 466); and when such occurs, the customary mode of descent must be pursued; for it is out of the power of any individual to prescribe a mode of descent not sanctioned by the general rule of common law, or authorized by custom (Rob. Gav. b. 1, c. 5, pp. 92, 93; Co. Litt. 27; Scriv. Cop. 36; Wat. Desc.; *Baxter* v. *Dowdeswell*, 2 Lev. 138; *Fawcett* v. *Lowther*, 2 Ves. 302); consequently, if one seised of copyhold lands, descendible on the youngest son in the nature of borough English, were to surrender to the use of himself and his heirs, according to the course of common law, the words "*according to the custom of the*

CHAP. VIII. *Custom.*

common law," would be void, and the youngest, and not the eldest, son would take the land: (Scriv. Cop. 36; Dy. 179, pl. 45.)

Custom prescribing descents different from the course of the common law construed strictly.

Every custom, however, which prescribes a course of descent different from the rules and maxims of the common law, will be construed strictly. If, therefore, the custom of the manor be that the youngest son shall succeed as heir to his parent, he shall do so; but if the custom says nothing about the succession of a younger brother or nephew, the brothers or nephews must succeed according to the direction of the general law: (Wat. Cop. 60; Rob. Gav. b. 1, c. 6, p. 93; *Denn dem. Goodwyn* v. *Spray*, 1 T. R. 466.) Still it seems that a custom in favour of a younger brother, or a younger nephew, if it can be shown by any precedents to have been put in use, will be good. Thus in *Doe dem. Mason* v. *Mason* (3 Wils. 63), where the custom of descent was proved to extend to the youngest son, and if no son, to the youngest brother, and there was one instance only in favour of a youngest nephew, the plaintiff, who claimed as youngest nephew and heir by the custom, had a verdict, and the court refused a new trial. And it should seem that, although the common-law course will prevail in collateral matters, where the custom is silent (Scriv. Cop. 35), it will nevertheless attach in the lineal descent; consequently the issue of a younger son shall be preferred, in the descent of borough English lands, to the issue of the eldest: (*Clements* v. *Scudamore*, 1 P. Wms. 63; S. C. 1 Salk. 243; 2 Ld. Raym. 1024.) So if the custom be that the eldest daughter shall inherit, and she die in the lifetime of the father, leaving issue a daughter, such issue is within the custom, and shall take place of her aunt: (*Godfrey* v. *Bullock*, 1 Roll. Abr. 623.) And if the custom of the manor be that the lands of every *tenant of the manor dying seised* shall descend to the

youngest son, or to the eldest daughter, and the ancestor never was a tenant of the manor, or did not *die seised*, the descent cannot be within the custom. Thus, if a tenant of a manor die seised of such lands, without issue, but leaving nephews and nieces (the children of his brother), the custom shall not extend to them; for they must make out their claim or pedigree through their father, who *was never a tenant of the manor*, and consequently could not have died seised; and besides all this, they claim as *collaterals of the last dying tenant*, and are consequently without the custom in that respect also: (*Fane* v. *Barr*, 1 P. Wms. 63; *Denn* v. *Spray*, 1 T. R. 466.) It seems, also, that particular customs of descent will extend to equitable as well as legal estates (*Roberts* v. *Dixwell*, 1 Atk. 610; *Jones* v. *Reasbie*, Gilb. Uses, 19; *Edwin* v. *Thomas*, 1 Vern. 489; 2 *ib.* 75), except when restricted to an actual seisin at the time of the death: (*Clements* v. *Scudamore*, 1 Salk. 243.) But this customary mode of descent, though it will prevail in the case of a trust executed, yet it will be otherwise in the case of such trusts as are merely executory; as, for example, where by marriage articles, lands in gavelkind or borough English (*Starkey* v. *Starkey*, 7 Bac. Abr. 179), are agreed to be settled on A. for life, with remainder to the heirs of his body, the common-law heir would become entitled under this settlement in preference to the customary heirs, and the settlement would be decreed to be made upon A. for life, with remainder to his eldest son and the heirs of his body, with remainder to the second son and the heirs of his body: (*Roberts* v. *Dixwell*, 1 Atk. 606; see also *Payne* v. *Barker*, Sir Orl. Bridg. 18; Rob. Gav. b. 1, c. 6, p. 156; 2 Wat. Cop. 109.)

Shelley's case.

The rule in *Shelley's case*, we have already seen, is applicable to copyhold as well as to freehold estates: (see vol. 1, p. 349.)

SECTION III.

ALIENATION OF COPYHOLDS.

1. *Copyholds pass by Surrender and Admission.*
2. *Operation of Surrender.*
3. *Presentment.*
4. *What Estate passes by Surrender.*
5. *Admission.*
6. *Of the Declaration of Uses.*

1. *Copyholds pass by Surrender and Admission.*

Surrender and admission.

THE legal estate in copyholds can only pass by surrender and admission (Wat. Cop. 50; Scriv. Cop. 151; *Knight* v. *Cooke*, 2 Ch. Cas. 43); hence copyholds cannot be exchanged by an ordinary deed of exchange at common law, but each must surrender to the use of the other, and be admitted accordingly. Yet an equitable estate in copyholds may pass by deed without either surrender or admission: (Wat. Cop. 60; Scriv. Cop. 262; *King* v. *King*, 3 P. Wms. 360; *Hawkins* v. *Leigh*, 1 Atk. 388; *Macey* v. *Shurmer*, *ib.* 389; *Tuffnell* v. *Page*, 2 *ib.* 38; *Car* v. *Ellison*, 3 *ib.* 73; *Allen* v. *Poulton*, 1 Ves. 121; *Gibson* v. *Montford* (*Lord*), *ib.* 490; *Macnamara* v. *Jones*, 1 Bro. C. C. 481; *Rowe* v. *Lowe*, 1 H. Blac. 461.) So, if a power or authority be given

Alienation of copyholds.

to a person, he may exercise it, and the vendee or appointee shall be in under the original instrument, without a new surrender to his use: (*Beal* v. *Shepherd*, Cro. Jac. 199; *Holder* v. *Preston*, 2 Wils. 200.)

As to copyholds in fee.

With respect to copyholds in fee, though a surrender is indispensable, still the lord is a mere conduit-pipe for that purpose: no interest passes to or remains in him; and the surrenderee, when admitted, is in by the surrender, and not by the lord; and the power of alienation in the copyholder is now so well established, that the lord is compellable, not only by subpœna in equity (*Williams* v. *Lonsdale*, 3 Ves. 752; and see *Roe* v. *Griffiths*, 4 Bur. 1961; *Vaughan dem. Atkins* v. *Atkins*, 5 Bur. 2787; *Towell* v. *Cornish*, 2 Keb. 357; *Moor* v. *Huntington*, Nels. C. R. 12; *Lunsford* v. *Popham*, Toth. 64; *Newby* v. *Chamberlain*, *ib.* 65; *March* v. *Gage*, *ib.*; *Derby* v. *Wainwright*, cited Hardr. 160), but by *mandamus* at law, to admit the person nominated by the former tenant: (*Rex* v. *Hendon* (*Lord of the Manor of*), 2 T. R. 484; *Rex* v. *Coggan*, 6 East, 431; Wat. Cop. 51—93; *Rex* v. *Stafford* (*Marquis of*), 7 East, 521; *Rex* v. *Water Eaton* (*Lord and Steward of*), 2 Smith, 54; *Rex* v. *Wilson*, 10 B. & C. 80; *Rex* v. *Boughey*, 1 B. & C. 565; S. C. *Rex* v. *Meer* (*Lord of the Manor of*), 2 Dow. & Ry. 824.) And this, whether the surrender be made of a portion only, or of the entirety of the premises (*Snag* v. *Fox*, Palm. 342; *Freeman* v. *Phillips*, 4 M. & Selw. 486), or of the whole or a portion of the copyholder's interest therein: (*Fitch* v. *Hockley*, Cro. Eliz. 441; Scriv. Cop. 623.)

2. *Operation of Surrender.*

Surrender.

A surrender is defined to be the yielding up of an estate by the tenant to the lord, either as a

CHAP. VIII.

Alienation of copyholds.

relinquishment or resignation of such estate, or as the means of conveying it to another. It may be made in court, or into the hands of the lord, or his steward, or his deputy steward, out of court, without a special custom to do so : (*Dudfield and Andrews*, 1 Salk. 184; *Lord Dacre's case*, 1 Leon. 289; *Parker* v. *Kett*, 1 Salk. 95; *Tukeley* v. *Hawkins*, 1 Lord Raym. 76; *Burgesse and Foster*, 1 Leon. 289; *Burdet's case*, Cro. Eliz. 48.) By special custom, but not otherwise, a copyholder may surrender out of court to the bailiff, beadle, or reeve of the manor : (Wat. Cop. 77.) By special custom, also, the surrender may be made into the hands of two tenants of the manor (Co. Litt. 59, a), or of one tenant (Kitch. 1026), or into the hands of the bailiff in the presence of two tenants, or into the hands of a tenant in the presence of other persons (Co. Litt. 59, and Kitch. 201; *Turner* v. *Benny*, 1 Mod. 61.)

Copyholder may surrender under a power of attorney as well as in person.

And notwithstanding a doubt has existed in practice, it is now clearly settled that a copyholder may surrender by a power of attorney, as well as in person; for all such acts as a copyholder can do himself, he may authorize another to do for him, either in or out of court, and without any special custom for it : (*Combes's case*, 9 Co. 75, b; *Parker* v. *Keck*, Com. 85; *Warner* v. *Hargrewe*, 2 Roll. Rep. 393; 1 Wat. Cop. 77; Scriv. Cop. 154.)

Purchaser has a right to insist of surrender being made in person.

But though a surrender by attorney is valid, a purchaser has still a right to insist on the surrender being made by the vendor in person, as a surrender by attorney tends to multiply his proofs; for the letter of attorney may possibly be revoked, or it may be lost, and thus expose him to difficulties : (*Mitchel* v. *Neale*, 2 Ves. sen. 679; *Noel* v. *Weston*, 6 Mod. 50.)

Surrender by attorney cannot be

But where it is necessary to allege a special custom to enable a copyholder to surrender in

person, he cannot surrender by attorney; as, a surrender into the hands of two tenants (Co. Litt. 59, a), or into the hands of the bailiff or reeve of the manor (*ibid*); for in these cases a special custom would be necessary to warrant the surrender of the copyholder himself, and therefore a surrender by attorney would not be good without a further custom for doing so: (Wat. Cop. 68.)

made where it is necessary to allege a special custom to surrender in person.

Neither can a person having a bare authority to sell land, as an executor, for example, surrender by attorney: (*Combes's case*, 9 Co. 75.) The person who appoints the attorney must, in point of fact, have such a power to assign as may be so executed, for *delegatus non potest delegare*.

Person selling under a bare authority cannot surrender by attorney,

The person appointing the attorney, also, must not be under any disability; for a person *non compos*, under coverture, or an infant, cannot make an attorney by the common law, nor can they be enabled by custom; and the statute of 9 Geo. 1, it must be remembered, only enables *femes coverts* and infants to make attorneys for the purpose of admission. It has nothing to do with surrenders: (Wat. Cop. 66, f.)

Person appointing the attorney must not be under any legal disability.

But a *feme covert*, or an infant, may be an attorney for another, the act being merely ministerial: (Co. Litt. 52, a.)

Feme covert or an infant may be an attorney for another person.

The attorney must be appointed by deed (Gilb. Ten. 252), and he must pursue his authority strictly and consistently with the customs of the manor; still, if he exceed his authority, the surrender will not be void *in toto*, but only as to the excess: (*George dem. Thornbury* v. *Jew*, Amb. 627.)

Attorney must be appointed by deed.

An attorney may surrender either in the name of his principal, or in his own name (*Parker* v. *Kett*, 1 Salk. 96), but in the latter case the power should be referred to. It is no objection to the attorney's acting that the principal himself is also present: (Scriv. Cop. 157.)

Attorney may surrender either in his own name or in name of his principal.

3. *Presentment.*

When the surrender is complete, the next step is the presentment of such surrender, which, if it be taken out of court, should, according to the general custom of manors, be made at the succeeding court day (Co. Cop. s. 3; Tr. 88; Co. Litt. s. 79; Gilb. Ten. 220, 280; Scriv. Cop. 277; *Burgaine* v. *Spurling*, Cro. Car. 273, 283; *Burton* v. *Lloyd*, 3 P. Wms. 285, a; *Fawcett* v. *Lowther*, 2 Ves. 300; *Moore* v. *Moore*, *ib.* 596; *Mitchel* v. *Neale*, *ib.* 679); though, by special custom, it may be made at a subsequent one: (*Moore* v. *Moore*, 2 Ves. 602.) In *Horlock* v. *Priestley*, indeed (2 Sim. 77), the Vice-Chancellor expressed an opinion that, even in the absence of any special custom, a surrenderee has an inchoate legal title capable of being made complete whenever it may suit his convenience to have the surrender presented. The correctness of this *dictum* seems questionable, and in a case decided about the same time in the King's Bench, in which a question of this kind was mooted (*Doe* v. *Callaway*, 6 B. & C. 492; 9 Dow. & Ry. 518), Lord Tenterden, although, he said, it was not necessary, in the case before him, to give an opinion whether such a custom was good in point of law, yet he must say he should have great difficulty in holding that such a custom was good in point of law.

No time should be lost in getting presentment made.

And even where such a custom can be supported, no time should be lost in getting such presentment made; for if a subsequent surrenderee should make a prior presentment, he would exclude the former surrenderee, even though both presentments should be made at the same court: (*Burgaine* v. *Spurling*, Cro. Car. 273, 283; S. C. Sir W. Jones, 306.)

Presentment should correspond with

It is also essential that the presentment should correspond in all material points with the sur-

render, as any variance between them might be fatal: (Scriv. Cop. 279; Wat. Cop. 88.)

terms of surrender.

It must also be ascertained that the presentments have been duly made and entered on the rolls. This is a matter of the utmost importance; for although some contend that presentment is only for the information of the lord, to apprise him that a surrender has been made, and therefore that it is not essential when the lord has obtained that information *aliundè*, there are others who argue just as strongly that a presentment, in every instance, is of as much importance as a surrender or admittance; that it is an integral part of the copyhold assurance, the tenant holding by copy of court roll, and presentment being an essential part of that roll,—and, in short, that the want of a true presentment will be a fatal defect in the surrender and admittance: (see Mr. Coventry's note to Wat. Cop. 80; Scriv. Cop. 279, *et seq.*)

Importance of ascertaining that presentments have been duly entered on the court-rolls.

If, however, the presentment be truly made and accord with the surrender, and yet be wrongly entered on the rolls, the rolls may be amended. As for example, if a surrender be made upon condition and so presented, and the steward in presenting it omit the condition, enrolling it as an absolute one, yet, upon sufficient proof made in court, the surrender shall not be avoided, but the roll, being no estoppel nor record (*Burgesse and Foster's case*, 1 Leon. 289; 4 *ib.* 215), shall be amended; and this shall be no conclusion to the party to plead or give in evidence the truth of the matters: (*Winter and Jerningham*, Dy. 251, b; Gilb. Ten. 192; Co. Cop. s. 40, p. 89.) And though the admission was absolute, yet the surrenderee shall be subject to the condition; for when admitted, he shall be in by the surrenderor, and the lord cannot vary his estate: (Co. 28, b; Wat. Cop. 90.) So where a covenant to settle copyhold lands on the *heirs*

When entry of presentment, if wrongly made, may be amended.

CHAP. VIII. *Alienation of copyholds.*

male was entered on the rolls to the heirs general, the surrender was decreed to be vacated, and a new surrender directed according to the covenant: (*Brend* v. *Brend*, Finch, 254.) In another case (*Hill* v. *Wiggett*, 2 Vern. 547), an entry in the steward's book, accompanied with corresponding parol proof by the foreman of the jury, was admitted as good evidence that a *feme covert* had surrendered the entirety of her estate, though the surrender on the roll and the admission was only of a moiety. And it has also been held, that a mistake by a steward in a surrender is only matter of fact; hence the courts of law will admit an averment of such mistake, either as to the land or uses: (*Towers* v. *Moor*, 2 Vern. 98.) And although parol evidence will not be admitted to supply the defect in a copyhold surrender, yet, in a case of fraud and imposition, the defendant will be allowed to read parol evidence in order to prove it, and oral testimony may be adduced to rebut an equity set up by the plaintiff, notwithstanding the Statute of Frauds: (*Walker* v. *Walker*, 2 Atk. 98; and see also Coventry's note to Wat. Cop. 90.)

4. *What Estate passes by Surrender.*

Surrender only passes such an interest as copyholder takes in the premises.

A surrender will pass no greater estate or interest than the copyholder himself takes in the premises. Hence, if A., a copyholder for life, surrender to B., for the life of B. it will only give the latter an estate for the life of A. (Co. Cop. s. 34; Tr. 76; Wat. Cop. 98; Gilb. Ten. 257); for a surrender will pass no more than what the person making it may lawfully pass, and is not permitted to operate tortiously; therefore a surrender by the husband will be no discontinuance of the wife's copyhold lands: (4 Leon. 88, ca. 186; 4 Co. 23, a; and see *Oldcott* v. *Lovell*, Moore, 753; *Knight* v. *Foot-*

man, 1 Leon. 95; Gilb. Ten. 189; *Shaw* v. *Thompson*, Cro. Eliz. 361.)

Evidence of surrender.

The court rolls afford the best evidence of surrender and presentment, but they are not the only evidence, as these acts may be proved by draughts of an entry produced from the muniments of a manor, and the parol testimony of the foreman of the homage who made such presentment: (*Doe dem. Priestley* v. *Calloway*, 6 B. & C. 848.) Nor is an entry on the rolls in all cases conclusive on the parties, as a mistake in the entry may be shown by averment in pleading, or by evidence before a jury: (*ibid;* and see also *Burgesse and Foster's case*, 1 Leon. 289; S. C. 4 *ib.* 214; *Kite* v. *Quienton*, 4 Co. 25.)

Of surrenderee's interest prior to admittance.

A surrenderee, prior to his admittance, takes merely as a nominee or appointee, so that before admission he may be said to have neither a *jus in re*, nor yet *ad rem;* he cannot enter without consent (*Berry* v. *Greene*, Cro. Eliz. 349), nor maintain trespass (Wat. Cop. 101); and having, therefore, no estate in the premises, he has nothing to forfeit until admitted to them (*Roe dem. Jefferys* v. *Hicks*, 2 Wils. 13); neither has he anything to convey, so that he is incapable of surrendering to the use of another: (*Rawlinson* v. *Green*, Poph. 127; S. C. 3 Bulstr. 237; *Wilson* v. *Weddell*, 1 Brownl. 143; *Doe dem. Tofield* v. *Tofield*, 11 East, 246; *Robinson* v. *Grewes*, Bridg. 81; *Ford* v. *Hoskins*, Cro. Jac. 368; see also *Butler and Baker*, 3 Co. 39.) Still, for all this, he has such an equitable interest as was capable of assignment (Wat. Cop. 101), and the lord may be compelled to admit accordingly: (*Rex* v. *Hendon* (*Lord of the Manor of*), 2 T. R. 484; *Roe* v. *Griffiths*, 4 Bur. 1952; S. C. 1 W. Black. 605; *Holdfast* v. *Clapham*, 1 T. R. 601; *Doe* v. *Hall*, 16 East, 208.)

Alienation of copyholds.

5. *Admission.*

Admission, effect of.

Admission is said by some to be the formal, and the surrender the substantial, part of the copyhold assurance: (*Benson* v. *Scott*, 4 Mod. 251; S. C. Salk. 185; Carth. 275; Skin. 406; see also Gilb. Ten. 438, n. 94; Scriv. Cop. 349.) By others it is said to be the life and perfection of the copyholder's estate, and to be to the surrender what livery of seisin is to the feoffment, which is more of essence than of form. It is, however, agreed on all sides, that admission confers no right, but merely gives the party having a title to the possession the means of obtaining it: (see Mr. Coventry's note to Wat. Cop. 230.) Still the admission has reference to the surrender, so as to defeat all mesne acts, as well of the surrenderor as of the lord of the manor (*Benson* v. *Scott, sup.*; *Grantham* v. *Copley*, 2 Saund. 422; *Holdfast dem. Woollams* v. *Clapham*, 1 T. R. 600; *Doe dem. Bennington* v. *Hall*, 16 East, 208); but until admittance the surrenderee is a mere stranger (*Payne* v. *Baker*, Orl. Bridg. 33), and is therefore incapable of surrendering (Co. Cop. s. 56; Tr. 130; Scriv. Cop. 170, 360); but where a surrenderee dies before admittance, though he has in a strict sense no legal right to the tenement, he had still a *scintilla juris* in a larger sense upon a contingency; *i. e.* if the presentment be duly made, he has a right to compel the lord, by a suit in Chancery, to admit him, which right descends upon his heir: (*Payne* v. *Baker*, *sup.*)

Devisee had no estate until admittance.

A devisee had no estate until admittance; and if not admitted, his devisee would have had no title whatever,—either at law, for the admittance of such unadmitted devisee has no relation back to the last legal surrender (*Smith* v. *Inggs*, 1 Str. 487; *Doe* v. *Vernon*, 7 East, 8); or in equity, for this is not a case in which a court of equity

Alienation of copyholds.

would have supplied a surrender, and such unadmitted devisee having no equity in himself, he consequently could not have conveyed any to devisee: (*Wainwright* v. *Elwell*, 6 Mod. 637.) It is apprehended, however, that in such a case the heir of the first devisee might claim to be admitted, though the lord could not compel him: (Scriv. Cop. 361, a.)

Operation of new Will Act as to unadmitted copyholders.

By the new Will Act (1 Vict. c. 26), it is, however, expressly enacted "that the power thereby given shall extend to all real estate of the nature of customary freehold, or tenant right, or customary, or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding that, being entitled as heir, *devisee*, or otherwise to be admitted thereto, he shall not have been admitted thereto, &c.:" (sect. 3.) Independently even of this statute, an unadmitted purchaser might have devised before admittance: (*Lady Foljamb's case*, 1 Ch. Cas. 39.) In a case of this kind, the heir-at-law, and not the devisee, will be the proper person to be admitted, because a court of law cannot recognize the interest of the devisee at the same time that it denies any power in the devisor to devise; but then the heir will be a trustee for the devisee. By this means two fines will be incurred before the devisee can acquire the legal estate, and perhaps a third, if the lord be entitled to a death fine: (see also Cov. note to Wat. Cop. 125.) The admittance of a tenant for life or years is at the same time an admittance of all in remainder (*Buller* v. *Lightfoot*, 3 Leon. 239; 4 *ib.* 9; *Heggor* v. *Felson*, 4 Leon. 111; *Gyppyn* v. *Bunney*, Cro. Eliz. 504; S. C. by the name of *Tipping* v. *Bunning*, Mo. 465; *Colchin* v. *Colchin*, Cro. Eliz. 662; *Auncelme* v. *Auncelme*, Cro. Jac. 31; *Bullen* v. *Grant*, Cro. Eliz. 148; *Brown's case*, 4 Co. 226; *Fitch's case*, *ib.* 23, a; *Jurden* v.

CHAP. VIII. *Alienation of copyholds.*

Stone, Hutt. 18; *Warsopp* v. *Abell*, 5 Mod. 306; *Blackborn*, or *Batmore*, or *Blackborough* v. *Greaves*, 1 Mod. 102; S. C. 3 Keble, 263; 1 Ventr. 260; 2 Lev. 107; *Barnes* v. *Corke*, 3 Lev. 308; *Bath* (*Earl of*) v. *Abney*, 1 Bur. 206; S. C. Co. 713; *Doe dem. Whitbread* v. *Jenney*, 5 East, 522; 7 *ib.* 22; *Reid* v. *Shergold*, 10 Ves. 380; *Church* v. *Munday*, 12 Ves. 426, 431; *Kensington* (*Lord*) v. *Mansell*, 13 *ib.* 246, 253); the whole limitations forming together but one estate, and therefore one fine only can be due unless by special custom: (Scriv. Cop. 405.) The admission of one joint tenant is also the admission of them all; joint tenants being seised *per mie et per tout*, so that if one die, or release or surrender to his companions, no new admittance is necessary (Co. Cop. s. 35; Tr. 82; *ib.* s. 56; Tr. 130; Co. Litt. 193, a; *ib.* ss. 286, 288; *Wase* v. *Pretty*, Winch. 3; *Mortimore's case*, Hetl. 150; Gilb. Ten. 286, 330; *Doe dem. Aston* v. *Hutton*, 2 Wils. 192); for they form altogether but one tenant to the lord; consequently, one fine only is due on their admission, or on the admission of their surrendere: (Scriv. Cop. 363, 411.) The like observations are also applicable to coparceners, who, however numerous they may be, form altogether but one heir, and therefore one admission, one fine, and one set of fees will suffice for them all: (Litt. ss. 241, 313; *Morrice* v. *Prince*, Cro. Car. 251; Gilb. Ten. 174; Wat. Cop. 277.) It seems also that, like joint tenants, they may release to each other, and that no further admission of them will be requisite: (Co. Litt. 96; Gilb. Ten. 73; Scriv. Cop. 364.) Coparceners, indeed, may be, and in fact often are, admitted severally,—a practice introduced by stewards in order to multiply their fees. This will not, however, affect the fine, as that will be apportioned amongst them; but the fees will be increased in proportion to the number

Alienation of copyholds.

admitted: (*ibid.*) Tenants in common, as they take several and distinct estates, must be severally admitted, and must also pay several fines (*Hobart* v. *Hammond*, 4 Co. 28, a); and if one tenant in common die, or surrender to another, the surrenderee or the heir must be regularly admitted, and pay the fine accordingly: (Co. Cop. s. 56; Tr. 130; *Fisher* v. *Wigg*, 1 P. Wms. 21; S. C. Salk. 391; Wat. Cop. 280; Scriv. Cop. 364, 365; *Attree* v. *Scott*, 6 East, 484.) But if several undivided shares of a copyhold become reunited in one person, as where several tenants in common concur in the surrender to one person (Co. Cop. 56; Tr. 130; Kitch. 242; Scriv. Cop. 412), they again form one entire and undivided estate: (*Garland* v. *Jekyll*, 2 Bing. 303; *Holloway* v. *Berkeley*, 6 B & C. 14; overruling Lord Ellenborough's decision in *Attree* v. *Scott*, 6 East, 476.)

Personal representatives.

Executors and administrators of a copyholder must be admitted, and pay a fine thereupon: (*Gravenor* v. *Ted*, 4 Co. 23, a; *Batmore* v. *Graves*, 1 Mod. 102, 120; Scriv. Cop. 368, 413.)

Commissioners and assignees of bankrupts.

Previously to the statute 6 Geo. 4, c. 16, copyholds were included in the bargain and sale from the commissioners to the assignees of a bankrupt; the consequence of which was, that it became necessary for the assignees to be admitted, whereby a double fine was incurred,—one on the admission of the assignees, another on that of the purchaser. In order to prevent this consequence, it became the practice for the commissioners to except the copyholds out of the bargain and sale of the bankrupt's estate to the assignees, and to convey them at once to the purchaser, by which means one fine only was incurred: (*Drury* v. *Mann*, 1 Atk. 96; *Ex parte Holland, re Harvey*, 4 Mad. 483; Scriv. Cop. 369, 370.) The statute 6 Geo. 4, c. 16, s. 68,

CHAP. VIII.

Alienation of copyholds.

however, empowers the commissioners, by deed indented and enrolled, to dispose of the bankrupt's copyhold lands, and to authorize any person on their behalf to surrender the same to the purchaser; so that the bargain and sale of the commissioners under this act transferred the beneficial interest only to the purchaser; and as he did not require the legal estate until he was admitted upon the surrender of the person so authorized to make it, no fine became payable out of the bankrupt's estate: (Scriv. Cop. 415.) Nor is the law altered in this respect by the more recent enactment of the 1 & 2 Will. 4, c. 56, as the 26th section of that act, which vests the real estate of the bankrupt in his assignees, does not apply to copyhold property, but is confined to such real estate as by the act of 6 Geo. 4 was directed to be conveyed by the commissioners to the assignees, namely, the bankrupt's freehold property; so that the powers conferred by the 6 Geo. 4 still remained in force with respect to the sale of copyholds, and might have been exercised by any one of the commissioners of the Court of Bankruptcy, or by the commissioners named in the fiat: (Scriv. Cop. 372.)

Assignees of insolvents.

A great difference of opinion seems to have existed amongst the profession, as to whether it was necessary that the provisional or general assignee of an insolvent debtor should have been admitted to the premises in order to confer a title to copyholds through an insolvent debtor (see stats. 53 Geo. 3, c. 102; 54 Geo. 3, c. 28; 1 Geo. 4, c. 119; 7 Geo. 4, c. 57; 5 Will. 4, c. 38); but it appears that it is not necessary that either should be admitted. A conveyance executed in pursuance of the 11th section of the statute 7 Geo. 4, would, prior to the recent stat. 1 & 2 Will. 4, c. 110, have had the effect of vesting the copyhold estates of the copyholder in the provisional assignee; but that interest was

divested and transferred to the general assignee by the conveyance and assignment under the 19th section of the 7 Geo. 4, and the 7th section of 1 Will. 4: (Scriv. Cop. 375.) Nor, it seems, will it be necessary that either the provisional or general assignee should be admitted under the more recent enactment of 1 & 2 Vict. c. 110. The 37th section of that statute vests all the insolvent's real and personal estate in the provisional assignee, by order of the court, without any conveyance or assignment, which by the 45th section will become transmissible to the general assignees appointed by the court by virtue of such appointment, and vest in them without any conveyance or assignment: (sect. 45.) And in case such prisoner shall be entitled to any copyhold or customary estates, a certified copy of such vested order as aforesaid, and a certified copy of the appointment of such assignee or assignees as aforesaid, shall be entered on the court rolls of the manor of which such copyhold or customary estate shall be holden; and thereupon it shall be lawful for such assignee or assignees to surrender or convey such copyhold or customary estate to any purchaser or purchasers of the same from such assignee or assignees as the court shall direct: (sect. 47.)

1 & 2 Vict. c. 110, s. 37.

Court may make sale of copyhold lands for the benefit of creditors.

And now by the recent statute 12 & 13 Vict. c. 106, with respect to copyholds it is enacted, that the court shall have power to sell, and by deed indented and enrolled in the courts of the manor or manors whereof the lands respectively may be holden, to convey, for the benefit of the creditors, any copyhold or customary lands, or any interest to which any bankrupt is entitled therein, and thereby to entitle or authorize any person or persons on behalf of the Court of Bankruptcy to surrender the same, for the purpose

CHAP. VIII. *Alienation of copyholds.*

of any purchaser being admitted thereto: (sect. 209.)

Vendees of copyhold lands shall compound with the lords for their fines.

That every person to whom any such conveyance of copyhold or customary lands or tenements, or of any such interest therein, shall be made, shall, before he enter into or take any profit of the same, agree and compound with the lords of the manors of whom the same shall be holden for such fines, dues and other services as theretofore have been usually paid for the same, and thereupon the said lords shall, at the next or any subsequent court to be holden for the said manors, grant unto such vendee, upon request, the said copy or customary lands or tenements, for such estate or interest as shall have been so conveyed to him as aforesaid, reserving the ancient rents, customs, and services, and shall admit him tenant to the same: (sect. 210; and see Wise Bankt. Law, 127, 128.)

Who may admit.

In the case of descents and surrenders, the lord, the steward or under-steward are merely instruments: they are compelled to admit, if ostensibly such, and the tenant is not bound to inquire into the legality of their title: (Co. Litt. 58, b; 1 Co. 140, b; Wat. Cop. 254.) The lord may, if he pleases, admit by attorney, but he cannot be compelled so to do (*Combe's case*, 9 Co. 766; *Floyer* v. *Hedgingham*, 2 Cha. Rep. 56), except in the case of *femes coverts* and infants taking by descent or surrender to a last will, whom, under an act of Parliament, 9 Geo. 4, c. 29, he is now compellable to admit by attorney in certain cases: (Wat. Cop. 258.)

Customary form of admittance should be strictly adhered to.

The customary form of admittance should be strictly pursued, as any deviation would probably be fatal at law, though equity would doubtless relieve if there was a sufficient *bonâ fide* consideration to call for its interposition: (Scriv. Cop. 351; Fonbl. Eq. 38, lib. 1, c. 1, s. 7;

Smith v. *Smith*, 1 Cha. Rep. 57; *Bradley* v. *Bradley*, 2 Vern. 163; *Jenning* v. *Moore*, *ib.* 609; *Anon.* 2 Freem. 65; *Taylor* v. *Wheeler*, 2 Vern. 564; *Barker* v. *Hill*, 2 Cha. Rep. 113.)

Fine.

Upon the purchaser being admitted, his title is perfected; and then, but not until then, the fine of admission becomes payable (*Rex* v. *The Lord of the Manor of Hendon*, 2 T. R. 484); and this, and also the steward's fees, are to be paid by the purchaser; so that if, as I have already remarked, the vendor were to covenant to surrender the premises at his own cost, it would be no breach that he refuses to pay the fine, the title of the purchaser being perfected by the admittance (*Drury* v. *Mann*, 1 Atk. 95; Scriv. Cop. 384; *Graham* v. *Sime*, 1 East, 634), and the fine not payable until afterwards.

6. *Of the Declaration of Uses.*

Declaration of uses.

In treating the subject of the declaration of the uses of a surrender, I purpose to consider it — 1st. With respect to the person in whose favour the surrender is made. 2ndly. With respect to the property intended to pass by it: and, 3rdly. With respect to the limitation of estates by such surrender.

As to the person.

1. It is necessary, says Sir E. Coke (Co. Cop. 35, Tr. 80), that upon surrenders of copyholds, the name of the party to whose use the surrender is made be precisely set down; but if by any manner of circumstance the grantee may be certainly known, it is sufficient; and therefore a surrender made to the Lord Archbishop of Canterbury, or to the Lord Mayor of London, or to the High Sheriff of Norfolk, without mentioning either the Christian or surname, is good and certain enough, because they are certainly known by this name without further addition. So, if I

CHAP. VIII.

Alienation of copyholds.

surrender to the use of the next of my blood, or to the use of my wife, or to the use of my brother or sister (having but one brother or sister), these surrenders are good without any additions, because the grantee may be certainly known by the words: (Wat. Cop. 107.) So, if I surrender to the use of my son W., having more sons than one by that name, yet by averment this uncertainty may be helped: (*ibid.*; see also *Doe ex dem. Huckall* v. *Foster*, 9 East, 405.) But if I surrender to the use of my cousin or my friend, this is so general and so uncertain that no subsequent manifestation of my intention can in any way strengthen it. (Wat. Cop. 108.) So if three persons surrender to the use of three or four of St. Dunstan's parish, not naming the parishioners by their names, this surrender is utterly void; as it also will be if I surrender in the disjunctive to the use of J. L. or J. N. and thus be insufficient for the uncertainty: (Co. Cop. 35; Tr. 80, 82; Wat. Cop. 108; Scriv. Cop. 180, 181.) Questions have sometimes arisen as to whether a person who was named only in the *habendum* should take under a surrender of copyholds; and it has been said that he shall not take unless it be by a particular custom authorizing such grant: (*Westmore* v. *Hob*, 313); but this is certainly not the law of the present day, nor can it be supported by the principles upon which the rule respecting the operation of surrender of copyholds is governed. The surrender itself, as an eminent modern writer upon this subject observes (Scriv. Cop. 213), "merely points out the person whom the lord is to admit, and the estate intended to be transferred to him by the surrenderor; the lord then grants the seisin to the surrenderor without any words of limitation, to hold to the surrenderee *and his heirs*, or for such other interest as is expressed in the surrender; and if the surrender

does not distinctly describe either the person of the surrenderor, the estate, or the estate intended to be transferred to him, this may be explained by the act of admittance or grant:" (*Brooks* v. *Brooks*, Cro. Jac. 434; *Fisher* v. *Wigg*, 1 Ld. Raym. 624; see also Gilb. Ten. 255, 259.) And even at common law a person may take by way of remainder, though he be not named in the premises with him to whom the estate is first limited: (*Greenwood* v. *Tyber*, Cro. Jac. 563; Wat. Cop. 114, 115; Scriv. Cop. 214; 2 Roll. Abr. 67, pl. 11; Gilb. Ten. 259.) But an estate cannot arise by implication upon a surrender of copyhold property, any more than in a deed at common law: (*Allen* v. *Nash*, 1 Browl. 127; *Seagood* v. *Hone*, Cro. Car. 366; S. C., W. Jones, 342; Gilb. Ten. 259; Wat. Cop. 215.)

As to the property surrendered.

2. Where the surrendered premises are sufficiently described, as by giving a close a particular name, a subsequent mistake, either as to the name of the tenant or the number of acres, will not injure the grant or surrender. Hence, where a copyholder surrendered all his copyhold cottage, with the croft adjoining, &c., *all which premises he stated were then in his own possession*, when in point of fact the surrenderor only held the cottage and garden behind it, it was nevertheless held that the croft passed; the description of the premises as being in the possession of the surrenderor being a mere mistake, and the words in the surrender being sufficient to comprise them: (*Goodright and Lamb* v. *Pears*, 11 East, 58; see also Shep. Touch. 99; *Goodtitle dem. Paul* v. *Paul*, 2 Bur. 1089; S. C. W. Black. 255; *Doe* v. *Greathead*, 8 East, 103.)

As to the limitation of estates under the surrender.

3. Surrenders of copyhold estates are said to be governed by the same rules of construction as conveyance of freehold estates: (*Idle* v. *Cook*, 1 Salk. 620; *Fisher* v. *Nicholls*, 3 *ib.* 100; S. C. Holt, 163; S. C. 2 Ld. Raym. 1144; *Fisher* v.

CHAP. VIII.

Alienation of copyholds.

Wigg, 1 Ld. Raym. 630; S. C. 1 P. Wms. 14; 12 Mod. 296; 1 Salk. 391; 3 *ib.* 206; *Stone* v. *Stone*, 2 Atk. 101; *Lovell* v. *Lovell*, 3 Atk. 11; *Allen* v. *Patshall*, Godb. 137; *Seawood* v. *Hone*, Cro. Car. 366; *Pawsey* v. *Lowdall*, Sty. 250; *Wright dem. Burrill* v. *Kempe*, 3 T. R. 473; Gilb. Ten. 268; *Rigden* v. *Valier*, 3 Atk. 731.) It is true that, copyholds not being within the Statute of Uses, that statute cannot execute the legal estate in the surrenderee, for until admittance the estate remains in the surrenderor; still, upon admittance, the surrenderee will become clothed with the legal estate, in the same manner as it would have vested in *cestui que use* in freehold estates under the statute, and will relate back to the time of the surrender, and operate from its date: (*Benson* v. *Scott*, 1 Salk. 185; S. C. Carth. 276; 3 Lev. 385; *Payne* v. *Barker*, Orl. Bridg. 24; *Vaughan dem. Atkins* v. *Atkins*, 5 Burr. 2785; *Grantham* v. *Copley*, 2 Saund. 422; *Holdfast dem. Woollams* v. *Clapham*, 1 T. R. 600; *Doe dem. Bennington* v. *Hall*, 16 East, 208.)

As to the application of the rule in *Shelley's case* to copyholds.

The same limitations, also, which in the case of a conveyance or devise of freeholds, would create an estate tail under the rule in *Shelley's case*, will create a similar estate when contained in a surrender or a devise of copyholds. And upon the same principle a surrender, and previously to the late Will Act, 1 Vict. c. 26, a devise of copyholds, without words of limitation, would have passed a life estate only: (Co. Cop. 59, b: *ib.* 41; Tr. 93.)

When the general rule of construction can be varied by force of a particular custom.

But notwithstanding that, generally speaking, the same words are necessary to create certain estates of copyhold as are requisite to the creation of the same estates in freehold, yet, by force of a particular custom, they may be otherwise created; thus, by special custom, an estate of inheritance may be created by the words *sibi et suis*, or *sibi et assignatis*, or the like: (*Bunting*

Alienation of copyholds.

v. *Leapingwell*, 4 Co. 29, b.) So, in some manors, the words "*sequels in right*" are used instead of the technical word "heirs," and in others in addition to it; as, to A., his heirs and sequels in right: (Wat. Cop. 109; Scriv. Cop. 179.)

Contingent remainders in copyholds.

A remainder of copyholds would not, however, have failed of effect for want of a preceding particular estate to support it: (*Mildmay* v. *Hungerford*, 2 Vern. 243; *Lovell* v. *Lovell*, 3 Atk. 12; *Habergham* v. *Vincent*, 2 Ves. 209; *Stansfield* v. *Habergham*, 10 Ves. 282; *Doe* v. *Martin*, 4 T. R. 64; *Roe dem. Clemett* v. *Briggs*, 16 East, 406); and therefore in settlements of copyhold estate it was the common practice to omit the limitation to trustees to support contingent remainders: (Scriv. Cop. 476; Wat. Cop. 197.)

Right of lord in case of forfeiture of particular estate.

It has, however, been suggested, that as the lord, in case of a forfeiture by a tenant for life, is entitled to the land for his own use during such particular estate (*Lane* v. *Pannel*, 1 Roll. Rep. 238, 317, 438; *Habergham* v. *Vincent*, 2 Ves. 214; S. C. 4 Bro. C. C. 364), a limitation to preserve contingent remainders should be inserted in settlements of copyhold as well as of freehold estates: (Atherley's Mar. Set. 570; Wat. Cop. 197.) There can be no doubt, certainly, as to the prudence of adopting such a course, if the lord would consent to accept a surrender so framed; but it seems that he could not be compelled to accept a surrender which would be calculated to defeat his right of entry for an act of forfeiture incurred by the tenant for life: (see Mr. Coventry's note to Wat. Cop. 197; Scriv. Cop. 480.) With respect to assurances made subsequently to the 8 & 9 Vict. c. 106, it has been already observed that trustees to preserve contingent remainders are no longer necessary, even in settlements of freehold property (see *ante*, vol. i. p. 315); but this statute, it must be

CHAP. VIII.

Alienation of copyholds.

observed, is only prospective in its operation: (*ibid.*)

A surrender of copyholds being construed as a deed at common law, and not as a will, it follows that an estate can no more be created to commence *in futuro* by surrender, than it could by a common-law assurance: (Wat. Cop. 198; *Clampe's case*, 4 Leon. 8; *Seagood* v. *Hone*, Cro. Car. 366; *Allen* v. *Nash*, Noy. 152; *Dunnal* v. *Giles*, Brownl. 41; *Simpson's case*, Godb. 264; S. C. Cro. Jac. 376, by name of *Sympson* v. *Sothern;* S. C. 1 Roll. Rep. 109, 137, 253, and 2 Roll. Abr. 791, 794, by name of *Simpson* v. *Southwood;* see also Gilb. Ten. 260; *Barker* v. *Taylor*, Godb. 451; *Bambridge* v. *Whitton*, March, 177; see also Scriv. Cop. 200.)

Whether an estate in copyholds can be limited to commence *in futuro*.

Whether a fee can be limited on a fee of copyholds by surrender, is a point of less certainty, and the authorities on the subject are many of them irreconcileable with each other; whilst the opinions of learned lawyers are no less at variance than the cases. Mr. Coventry, however, in a note to his edition of Wat. Cop. 210, n. 1, gives the clearest view of the law on this subject, in which, after stating that he had inspected the numerous cases on this head in the reports themselves, he had arrived at the following conclusions:—

Whether a fee can be limited on a fee.

1st. That an immediate surrender of copyholds cannot be maintained.

2ndly. That a fee may be limited on a fee in a surrender of copyholds, by way of condition, but not by way of springing, shifting or secondary use: (*Edwards* v. *Hammond*, 3 Lev. 132.)

3rdly. That a surrender may contain a power of appointment or nomination, but not a power that will defeat uses once vested: (*Beal* v. *Shepherd*, Cro. Jac. 199; *Driver* v. *Thompson*, 4 Taunt. 294; and see Belt's Supp. to Ves. 323.)

A condition cannot be

The same learned writer also remarks, that

"a condition cannot be made the means of limiting a fee upon a fee in the same manner, and to the same extent, as a limitation of uses in a statutable conveyance of freehold; neither can such power of nomination or appointment be made the medium of springing or secondary uses on freeholds, since the statute: (see Scriv. Cop. 226.) The cases in support of the doctrine that a surrender may be made *in futuro* are, for the most part, cases on wills, where, by means of executory devises, such uses are admissible; and it appears never to have been doubted that the equitable ownership of copyholds is susceptible of shifting uses in the same manner as freeholds; and if there have been many instances of surrenders to future and springing uses engrafted on the legal estate of copyholds in any particular manor, it is highly probable that a court of equity would consider such uses as sanctioned by custom, and assist in establishing rather than overturning them on the doctrine in question."

made the means of limiting a fee upon a fee.

In conclusion, however, he observes, that a title depending on a question of this kind depends on a very doubtful question, and that therefore a purchaser is not bound to accept it.

It is said that if a copyholder surrenders into the hands of the lord, without declaring any use, that it shall enure for the benefit of the lord, and the copyhold will become extinguished, as on a surrender by a tenant for life to him in reversion: (*Fisher* v. *Wigg*, 1 P. Wms. 17; Wat. Cop. 92.) But at the present day the Court of Chancery would doubtless catch at the slightest indication of the surrenderor's intention to preserve the estate from the consequences of this doctrine: (see Mr. Coventry's note to Wat. Cop. 92.)

Where no use is expressed.

Where the surrender is made to one party, and another pays the purchase money, the former will become a trustee for the latter, in like

Resulting trusts.

CHAP. VIII.

Alienation of copyholds.

manner as in purchases of freehold property, where the person taking the legal estate will in equity be decreed to be a trustee for him who advances the purchase money: (as to which see *ante*, vol. i. p. 386; see also *Dyer* v. *Dyer*, 2 Cox, 92.) In like manner, if copyholds are granted for two or three lives in succession, and one only pays the fine, the others are trustees for him: (*Benger* v. *Drew*, 1 P. Wms. 780; *Rundle* v. *Rundle*, 2 Vern. 264; *Withers* v. *Withers*, Ambl. 151; *Rumbold* v. *Rumbold*, 2 Eden, 15.) And this notwithstanding that the custom of the manor is that the lives shall take in succession: (*Smith* v. *Baker*, 1 Atk. 385; and see *Clarke* v. *Danvers*, 1 Cha. Cas. 210.) Still, for all this, a custom that the nominees shall take for themselves, unless a trust to exclude them appear on the rolls, has been held to be a reasonable custom: (*Edwards* v. *Fidell*, 3 Mad. 237.) To prevent questions from arising on this subject, an express declaration, where the nominees are to take beneficially or in trust, should always be inserted in or accompany the surrender: (see also Coventry's note to Wat. Cop. 214.)

SECTION IV.

TENANT RIGHT OF RENEWAL.

Right of renewal can only be supported by immemorial usage.

In certain manors copyholds are held for lives (*Kempe* v. *Carter*, 1 Leon. 65); or years (*Page's case*, Cro. Jac. 671), with a perpetual right of renewal on payment of a fine certain. A custom to renew for lives can only be supported by immemorial usage, otherwise it will be at the option of the lord whether he will grant or not: (Co. Litt. 290, b.) Where such a custom does exist, the right of renewal sometimes extends to three lives or any less number, and sometimes for even more than three lives; as, for example, in the manor of Bleadon and Priddie in Somersetshire, where the copyholds are granted for four lives successively, and the grantee in possession may surrender his own interest and also the reversionary interests: (*Prankerd* v. *Prankerd*, 1 Sim. & Stu. 1.) In other manors the right of renewal comprehends three lives in possession and three in reversion. And as a power to grant the greater power includes the less, under a custom to grant for three lives, a grant for two or one will be good: (*Down* v. *Hopkins*, Cro. Eliz. 323; *Ven* v. *Howell*, 1 Roll. Abr. 511; *Smartle* v. *Penhallow*, 1 Salk. 188; S. C. 3 *ib.* 181; 2 Ld. Raym. 295; and see Scriv. Cop. 121.) It seems, also, that in all manors in which a custom of tenant right of renewal prevails, the lord is bound to regrant for at least the residue of the life of the surrenderor; and in many

CHAP. VIII.

Tenant right of renewal.

manors the tenant has a right to name his successor, in which case the lord is bound to grant to such successor for the life of that person, as distinguished from the life of the surrenderor. Still, a copyholder for life has no right, in the absence of a custom to that effect, to substitute any person in his place in the tenancy, as such a power might often prove highly prejudicial to the lord, by enabling a tenant in ill health, or even in the last stage of consumption or some other incurable malady, to introduce a healthy and robust life into the tenancy in his stead: (see Mr. Coventry's note to Wat. Cop. 51.)

To support custom of tenant right of renewal the person entitled must be certain, as must also be the fine.

In order to support the custom of tenant right to renewal, it must point out the person from time to time entitled to the benefit of it, otherwise it will be liable to be impeached for uncertainty. It must also be shown that the fine is equally certain, or if not positively, at least relatively, certain, as a year, or a year and a half's value, at the time of the grant: (*Titus* v. *Perkins*, Skin. 250); to allege such custom to be on payment of *a reasonable fine* will not be sufficient, as that implies uncertainty (*Grafton* (*Duke of*) v. *Horton*, 2 Bro. Parl. Cas. 284; *Wharton* v. *King*, 3 Anstr. 659; *Abergavenny* (*Lord*) v. *Thomas*, *ib.* 668, n. *a*); and if such custom be not found to renew on payment of a fine *certain*, the lord may insist upon his own terms: (Litt. lib. 1, c. 9, s. 73; 2 Black Com. 79; Gilb. Ten. 239; 2 Wooddes. Lec. 45; Wat. Cop. 311; Scriv. Cop. 423.) *Freeman* v. *Phillips* (4 Mau. & Selw. 486) may indeed at first seem opposed to this doctrine, but in reality it is not so; for there the fine was considered as relatively, although not positively, certain, which is sufficient: (see Mr. Coventry's note to Wat. Cop. 374; and see Scriv. Cop. 426.)

SECTION V.

OF CONDITIONAL FEES.

In the absence of a custom to entail, terms sufficient to create an estate tail in freeholds will only pass a conditional fee.

It has already been stated that, in the absence of an express custom to entail copyholds, a limitation in terms which, if applied to freeholds, will create an estate tail, will confer merely a conditional fee in copyhold property: (see 3 Edw. 4, pl. 6; 4 Hen. 6, pl. 17; 41 Edw. 3, pl. 45; 45 Edw. 3, pl. 19.) Now, according to the legal idea of a conditional fee, it became alienable in fee-simple on issue born; and this power of alienation it was which was expressly restrained by the statute *de donis* (Stat. Westm. 2), but which statute, as it does not affect copyholds (*Heydon's case*, Sav. 67; *Rowden* v. *Malster*, Cro. Car. 42), leaves the power of alienation of property of that kind in precisely the same situation as if that act had never been passed. When, therefore, a limitation of copyholds is only regarded as conveying a conditional fee, the person to whom it is so limited may, on having issue, convey it away to a third party in fee-simple by a common surrender: (*Rowden* v. *Malster*, Cro. Car. 42); nor will this conveyance be affected by the subsequent failure of issue. And even if the surrender be made before issue had, yet, by analogy to the rule with respect to freeholds, it will be made good by relation, if issue be afterwards born. But it will be otherwise if no issue should ever be born. These observations are of course only applicable to those cases where there is no custom to warrant an entail; for where any such custom exists, then an estate tail, and not a fee-simple conditional at common law, would be held to pass.

SECTION VI.

ESTATES TAIL IN COPYHOLDS.

1. *Old Mode of barring Entails.*
2. *Modern Mode of barring Entails.*
3. *As to Estates Tail of Bankrupt Copyholders.*

1. *Old Mode of barring Entails.*

How estates tail in copyholds were barred previously to the Fine and Recovery Substitution Act.

PREVIOUSLY to the late Fine and Recovery Substitution Act (3 & 4 Will. 4, c. 74), there were several modes of assurance by which a copyholder tenant in tail might have barred that estate, and the remainders expectant thereon, and thus have acquired the fee; but the most general, the most solemn, and, according to Lord Macclesfield (*Dunn* v. *Green*, 3 P. Wms. 10), the most proper way, was by recovery in the lord's court on a plaint analogous to a recovery in the superior courts: (*Everall* v. *Smalley*, Str. 1179.) The fee thus acquired will descend in the same course as the estate tail would have descended; consequently, if the recoveror had taken the estate *ex parte maternâ*, the fee would have descended to his maternal heirs: (*Crow* v. *Baldwere*, 5 T. R. 104.)

Recovery should be entered on the court rolls.

The recovery, when suffered, should have been entered on the court rolls. But proceedings in a court of this description are not canvassed with the same accuracy as judgments in the courts of

Estates tail in copyholds.

Westminster Hall, and therefore a common recovery in a court baron has been supported, though erroneously, not merely on the ground of being a common assurance, but because it was suffered in a court baron: (*Ash* v. *Royle*, 2 Vern. 376; Show. Parl. Cas. 67.)

Where the custom prescribes no particular form, an entail may be barred by surrender.

Where the custom does not prescribe any particular mode of barring the entail, a surrender (although only to the use of a will) will be sufficient for that purpose without a custom: (*Otway* v. *Hudson*, 2 Vern. 585; *Martin dem. Weston* v. *Mowlin*, 2 Burr. 980; *Car* v. *Singer*, 2 Ves. sen. 603; *Moore* v. *Moore*, *ib.* 596.) But a custom to bar by surrender may be concurrent with a custom to bar by recovery; for it is no more unreasonable to allow two ways of barring an entail of copyholds, by surrender and recovery, than it was to permit two modes of alienating an entail of a freehold by fine and recovery: (*Everall* v. *Smalley*, 1 Wils. 26; S. C. 2 Str. 1197; *Doe* v. *Truby*, 2 W. Black. 944; 2 Wms. Saund. 422, n. 1.)

Other modes of barring entails of copyholds.

Another way by which an estate tail in copyholds might have been docked was by preconcerted forfeiture and regrant. This was effected by the tenant making a lease without licence, or unwarranted by the custom, or doing some other act to incur a forfeiture, whereupon the lord would seize upon the copyhold for such forfeiture, and immediately regrant it to the person designated: the whole procedure being a mere form for effecting a bar, and the lord a mere instrument, and compellable to regrant at pleasure, as in the case of a common surrender: (*Grantham* v. *Copley*, 2 Saund. 422; *Saunderson* v. *Stanhop*, 2 Keb. 127; S. C. 1 Sid. 314; *Taylor* v. *Shaw*, Carth. 6, 22; Co. Cop. s. 48; Tr. 112; Wat. Cop. 174, 175; Scriv. Cop. 71, *et seq.*) But it seems that a forfeiture and regrant will not be an effectual bar, unless there is

CHAP. VIII.

Estates tail in copyholds.

a custom to support it (*White* v. *Thornburgh*, 2 Vern. 705; *Pilkington* v. *Bagshaw*, Sty. 450; *Snow* v. *Cutler*, 1 Keb. 567, 752, 800, 851; 1 Lev. 136; 1 Sid. 153; Sir T. Raym. 164; *Car dem. Dagwel* v. *Singer*, 2 Ves. 604; *Martin dem. Weston* v. *Mowlin*, 2 Burr. 979); for where the custom is silent as to the mode of barring entails, the proper way of effecting it is by surrender: (Scriv. Cop. 75.) On this account, therefore, in modern practice, where there was a custom in the manor to bar entails, either by surrender or by recovery, a preference was usually given to the former: (*Everall* v. *Smalley*, Str. 1197; S. C. Willes, 26.) And a single instance of a surrender in fee by a tenant in tail, will be sufficient evidence to prove a custom to bar by surrender, if there are but few instances of bar by recovery: (*Roe* v. *Jeffery*, 2 M. & S. 92.) And by whatever mode of assurance the entail is barred, it will produce the same effect as a recovery suffered of freeholds. It will, in like manner, confirm prior charges, bar the remainders over, and enlarge the estate tail into a fee: (*Otway* v. *Hudson*, 2 Vern. 583.)

As to equitable estates.

Where the custom of a manor prescribes any particular mode of barring entails, that mode should be adopted in barring an equitable, which would be necessary to bar a legal, estate tail. If, therefore, the custom be that the entail should be barred by recovery, a recovery should be suffered in the manor court of the equitable estate in the copyholds, analogous to that relative to freehold property; and although an equitable tenant in tail of copyholds may have transferred his equitable interest to a mortgagee, he may, nevertheless, alone suffer an equitable recovery: (*Nouaille* v. *Greenwood*, 1 Turn. 26.)

Equitable estates in copyholds, in

In the absence of a custom to bar the entail by a recovery, an equitable estate, like a legal

Estates tail in copyholds.

the absence of a custom to the contrary, may be barred by surrender.

one, may be barred by a surrender only: (*Radford* v. *Wilson*, 3 Atk. 815.) And where an equitable entail may be so barred, it seems that a court of equity would deem a surrender of the fee-simple to the *cestui que trust* a sufficient bar to the entail: (*Grayme* v. *Grayme*, cited Wat. Cop. 180; *Otway* v. *Hudson*, 2 Vern. 583.) But where any other form of barring entails is prescribed by the custom, then it seems that the simple act of accepting a surrender of the legal estate by an equitable tenant in tail of copyholds will not, except under very particular circumstances and such as call for the aid of a court of equity, bar the entail. It must also be observed that the descent of the legal estate on an equitable tenant in tail will not operate as a merger, so as to bar an estate tail, even where there is a custom to bar it by surrender (*Merest* v. *James*, 6 Madd. 118); because, in order that an equitable may merge in the legal estate, they must be estates of the same quality, which an estate in fee and an estate tail are not. And the reason why accepting the legal fee by surrender will bar the equitable entail, whilst a descent of the same estate will not, is, that the acceptance of the legal fee by surrender will afford evidence of an intention to destroy an estate tail, and which a court of equity will consider as barred accordingly, but which intent cannot be inferred by the legal fee devolving by descent upon the person previously taking an equitable estate tail in the same premises: (see Mr. Coventry's note to 1 Wat. Cop. 179.) The enfranchisement of a copyhold tenant in tail will have the effect of barring his estate tail in the copyhold premises: (*Dunn* v. *Green*, 3 P. Wms. 9; *Parker* v. *Turner*, 1 Vern. 393; *Challoner* v. *Marshall*, 2 Ves. 524; *Wynne* v. *Cookes*, 1 Bro. C. C. 515; *Phillips* v. *Bridges*, 3 Ves. 127.) A dormant entail may be presumed to have been cut off, where several

CHAP. VIII

Estates tail in copyholds.

of the issue of the tenant in tail have been admitted as heirs in fee-simple (*Wadsworth's case*, Clay, 26); or there has been that length of possession and a consistent deduction to the title of the fee-simple from which such presumption may be reasonably inferred: (*Roe* v. *Lowe*, 1 H. Bl. 459; Wat. Cop. 181; Scriv. Cop. 81.)

Fine levied in Common Pleas no operationon copyholds.

Some difference of opinion seems to have existed as to whether a fine or recovery of copyhold lands levied or suffered in the Common Pleas would be binding and effectual; but the better opinion seems to be that it would not, and that neither the legal nor the equitable interest would be affected by it; for that in either case a fine so levied would be *coram non judice:* (Scriv. Cop. 87; *Searle* v. *Kitner*, Chan. April 15, 1809, cited 19 Ves. 335; *Scott* v. *Kettlewell*, 19 Ves. 335.)

2. *Modern Mode of barring Entails.*

Operation of Fine and Recovery Substitution Act upon copyholds.

The statute 3 & 4 Will. 4, c. 74, which abolishes fines and recoveries, and comprehends copyhold as well as freehold estates, prevents an estate tail from being now barred by a recovery in both descriptions of property. The clauses of that act, however, as far as they relate to the barring of estates tail, apply equally to copyholds as to freeholds, except that dispositions of copyholds under that act of legal estates are to be by surrender, and of equitable estates either by surrender or by deed: (sect. 50.)

As to consent of protector.

Where the consent of a protector is necessary to bar an estate tail in freeholds, it will be equally requisite to effect the same object in copyholds. If such protector consents by deed, the deed must be produced to the lord, or his steward, at or before the surrender, and the lord or steward is to acknowledge such production by indorsement on the deed, and enter the deed and indorsement on the rolls; and the indorsement

is to be evidence of the production, and the lord or steward is to indorse on the deed a memorandum of such entry: (sect. 51.) If the protector does not consent by deed, the consent is to be given to the person taking the surrender; and if the surrender be out of court, the consent is to be stated in the memorandum of the surrender, and the memorandum signed by the protector, and the lord or his steward to enter the memorandum on the rolls, and it is to be evidence of the consent and surrender; but if the surrender be in court, the lord or steward is to enter the consent on the rolls, with a statement of the consent, and such entry, *or a copy*, is to be evidence, as any other entry or copy: (sect. 52.)

As to equitable estates.

An equitable tenant in tail of copyholds may dispose of them under the act, or by deed to be entered on the rolls; and if the protector consent by a separate deed, it must be executed previously to, or simultaneously with, the disposition, and is to be entered on the rolls. Such entries are imperative on the lord, or his steward, who is to indorse on the deeds a memorandum of them; and the deed of disposition will be void against subsequent purchasers, unless it be so entered: (sect. 53.) But in no case where any disposition of copyholds by a tenant in tail under this act shall be effected by surrender, or by deed, shall the surrender, or a memorandum, or a copy thereof, or the deed of disposition, or the deed, if any, by which the protector shall consent to the disposition, require enrolment, otherwise than by entry on the court rolls: (sect. 54.)

3. *As to Estates Tail of Bankrupt Copyholders.*

Operation of the bankrupt acts in

By the 12th section of the stat. 21 Jac. 1, c. 19, and which was held to include copyholds,

CHAP. VIII.

Estates tail in copyholds.

barring entails of bankrupt copyholders.

the bargain and sale of the commissioners was a bar to the issue and remainders over of a bankrupt copyholder's entailed copyhold estate. This statute, together with all then existing statutes relating to bankrupts, was repealed by the stat. 6 Geo. 4, c. 19, by the 65th section of which the commissioners were empowered and directed to bar such estates tail by deed indented and inrolled in any of His Majesty's courts of record. This last-mentioned act is, however, repealed by the Fine and Recovery Substitution Act (3 & 4 Will. 4, c. 74, s. 55), so far as relates to the estates tail of bankrupts, but not so as to effect the lands of any bankrupts so adjudged under any commission or fiat issued previously to the 31st of December, 1833. It then proceeds to empower any commissioner acting in the execution of any fiat which shall be issued after the said 31st of December, 1838, by deed to dispose of the lands of a bankrupt tenant in tail to a purchaser, and to create by such disposition as large an estate in the lands disposed of as the actual tenant in tail, if he had not become a bankrupt, could have done: (sects. 56, 57, 58.)

Deed of disposition by commissioner to be entered on the court rolls of the manor.

And every deed by which any such commissioner as aforesaid shall dispose of lands held by copy of court roll, shall be entered on the court-rolls of the manor of which the lands may be parcel; and if there shall be a protector who shall consent to the disposition of such lands held by copy of court roll, and he shall give his consent by a distinct deed, the consent shall be void unless the deed of consent be executed by the protector, either on, or at any time before the day on which the deed of disposition shall be executed by the commissioner, and such deed of consent shall be entered on the court rolls; and it shall be imperative on the lord of every manor of which any lands disposed of under this act by any such commissioners as aforesaid may

Estates tail in copyholds.

be a parcel, or the steward of such lord, or the deputy of such steward, to enter on the court rolls of the manor every deed required by this present clause to be entered on the court rolls, and he shall indorse on every deed so entered a memorandum, signed by him, testifying an entry of the same on the court rolls: (sect. 59.) And all acts and deeds done and executed by a bankrupt tenant in tail affecting the entailed lands, and which, if he had been seised in fee, would have been void against his assignees and persons claiming under them, will be equally void against any disposition made by such commissioner under this act: (sect. 63.) The disposition of such commissioner will be equally valid, although the bankrupt be dead at the time of making such disposition: (sect. 65.)

All acts by bankrupt that would have been void against his assignees will be void against any disposition under this act.

And now by the recent Bankrupt Law Consolidation Act, 12 & 13 Vict. c. 106, it is enacted, that such of the clauses contained in the Fine and Recovery Substitution Act (3 & 4 Will. 4, c. 74), as related to dispositions of estates tail under bankruptcies, shall extend and apply to proceedings in bankruptcy under a petition for adjudication of bankruptcy, as fully and effectually as if those clauses were re-enacted in this act, and expressly extended to such proceeding: (sect. 208; and see Wise Bankt. Law, 127.)

Clauses in stat. 3 & 4 Will. 4, c. 74, with respect to the dispositions of estates tail under bankruptcies extended to proceedings under petitions for adjudications.

SECTION VII.

OF DEVISES OF COPYHOLDS.

1. *What would have constituted a valid Will of Copyholds.*
2. *Operation of Surrender to the Use of Will.*
3. *When Equity would have supplied a Surrender.*
4. *Operation of Stat.* 55 *Geo.* 3, *c.* 192, *upon Wills of Copyholds.*
5. *Alterations effected by recent Enactments.*

1. *What would have constituted a valid Will of Copyholds.*

Copyholds, how rendered devisable.

COPYHOLDS, although not rendered devisable by the statutes of wills (32 and 34 Hen. 8), and expressly excluded from the devising operation of the Statute of Frauds (29 Car. 2, c. 3, s. 12), were nevertheless devisable by will made in pursuance of the customs of the manors of which they were holden. If, therefore, the terms of the surrender were pursued, copyholds might have been devised, not only by an unattested will (*Semain* v. ———, Buls. 200; *Wagstaff* v. *Wagstaff*, 2 P. Wms. 258; *Burkett* v. *Burkett*, 2 Vern. 498; *Roe dem. Gilham* v. *Heyhoe*, 1 W. Black. 1114; *Tufnell* v. *Page*, 2 Atk. 37; *Attorney-General* v. *Sawtell*, *ib.* 497; *Marlborough*

(*Duke of*) v. *Godolphin*, 2 Ves. 77; *Henderson* v. *Farbridge*, 3 Russ. 482; *Attorney-General* v. *Andrews*, Ves. 225; *Appleyard* v. *Wood*, Sel. Cas. temp. King, 42; *Carey* v. *Askew*, 3 Bro. C. C. 59; *Doe dem. Cook* v. *Danvers*, 7 East, 299; *Noel* v. *Hoy*, 5 Mad. 38), but, when warranted by the custom, a will by mere word of mouth would have been sufficient: (Co. Litt. 101, n. *a*; Wat. Cop. 180; Roll. Abr. 614; *Davenish* v. *Baines*, 2 Eq. Ca. Abr. 43.) An instrument, also, which purported to be a deed, and upon stamps adapted to that kind of instrument, was held to be a sufficient declaration of the uses of surrender to will: (*Habergham* v. *Vincent*, 4 Bro. C. C. 353; S. C. 2 Ves. 229.)

Where the surrender prescribed any particular manner, such terms must have been complied with.

When, however, the surrender prescribed that the will should be executed in any particular manner, the terms of such surrender must have been complied with; consequently, if a copyholder had surrendered to such uses as he should appoint by will attested by three witnesses, and such will had been unattested, or attested by a lesser number of witnesses than three, nothing could have passed under it: (*Godwyn* v. *Kilsha*, Ambl. 684.)

Where the terms of surrender prescribed any particular forms, those forms must have been complied with.

And where by the custom of a manor any particular form was required, such form must have been complied with. Thus, in *Hudson* v. *Merest* (9 Pr. 566), where by the custom of the manor lands could not have been transferred but by bargain and sale and admittance, nor devised unless by a conveyance and declaring the uses of the will, it was held, on a suit by the daughters and heiresses of the devisee, claiming under the heir-at-law of the testator, who had been admitted, that the formalities had not been observed by the testator in conveying to the uses of his will, and that therefore the copyholds, or what were called tenant-right lands, did not pass by the devise.

Where there was no custom to surrender the will would have required three witnesses.

And where the customs of a manor did not require a surrender to the use of a will, such will must have been attested by three witnesses (*Hussey* v. *Grills*, Ambl. 299; *Willan* v. *Lancaster*, 3 Russ. 108); and this rule will apply to the equitable as well as to the legal estate, where there is no custom to surrender to the use of the will: (*ibid.*) But where there is a custom to surrender to the use of a will, the *cestui que trust* may, by the same kind of instrument, dispose of the trust estate as if he had the legal estate in him: (*Davie* v. *Beardsham*, 1 Cha. Cas. 39; S. C. 3 Cha. Rep. 4; 2 Freem. 157; 9 Mod. 75; 1 T. R. 601-2; *Greenhill* v. *Greenhill*, 2 Vern. 680; *Ardesoife* v. *Bennett*, 2 Dick. 465; *Hawkins* v. *Leigh*, 1 Atk. 387; *Macey* v. *Shurmer*, *ib.* 389; *Tufnell* v. *Page*, 2 Atk. 37; *Car* v. *Ellison*, 3 *ib.* 75; *Allen* v. *Poulton*, 1 Ves. 121; *Attorney-General* v. *Andrews*, 1 Ves. sen. 225; *Gibson* v. *Montford* (*Lord*), *ib.* 225.)

2. *Operation of Surrender to the use of Will.*

Surrender to the use of a will was essential to its testamentary operation.

By the general law of copyholds, a surrender to the uses of a will was essential to its testamentary operation (*Murrell* v. *Smith*, 4 Co. 24, n. *b*; Co. Cop. s. 36, Tr. 83; Wat. Cop. 122); and Lord Thurlow is reported to have said, that it would seem that a custom denying a copyholder the privilege of surrendering to the uses of his will, could not be supported: (*Pike* v. *White*, 3 Bro. C. C. 287.) It has, however, been doubted whether Lord Thurlow ever laid down so general a proposition as this: (see Eden & Bell's edition, 286, 288; 1 Evans's Statutes, 450; Mr. Coventry's note to Wat. Cop. 121; and Scriv. Cop. 264, n. *e.*) And the prevailing opinion seems to be that a custom restraining a copyholder from surrendering to the use of his will, would not be absolutely bad. It appears also

that there are some customary estates (chiefly in the north of England) that can only be devised through the medium of a deed of trust, and which, in some instances, must be renewed annually, or after certain periodical intervals, so that if the time of renewing them should be suffered to elapse, or the testator falls into a state of incapacity, the devise becomes inoperative: (1 Ev. Stat. 450.) Still it seems clear that a surrender to the use of a will will be good, though no instance can be found in the records of the manor in which such a surrender has been made; and even if a custom restraining a surrender to will could be clearly shown, there must yet be some mode of disposition by deed, as in the case of customary freeholds, the want of which a court of equity would have supplied: (*Church* v. *Munday*, 15 Ves. 396; and see *Doe dem. Cook* v. *Danvers*, 7 East, 306.)

A surrender to will severs a joint tenancy.

A surrender, although only to the uses of a will, will operate as a severance of an estate in joint tenancy, and a devise in pursuance of it will be good, although the presentment of it be not made until after the surrenderor's death: (*Constable's case*, cited Co. Litt. 59; *Porter* v. *Porter*, Cro. Jac. 100; *Allen* v. *Nash*, 1 Brownl. 127; S. C. Noy. 152; *Benson* v. *Scott*, 3 Lev. 385; S. C. 4 Mod. 254; *Gale* v. *Gale*, 2 Cox, 156; S. C. 2 Ves. 609; *Vaughan* v. *Atkins*, 5 Burr. 2783; *Edwards* v. *Champion*, 8 L. T. 512, 513.)

Surrender will only embrace such copyholds as copyholder has at that time.

A surrender to will, however, only related to such lands as the copyholder was possessed of at the time of such surrender, and would not therefore have passed as copyhold lands subsequently acquired: (*Frank* v. *Standish*, Exch. 19 Dec. 1772, 1 Bro. C. C. 588, n.; *Goodtitle dem. Faulkner* v. *Morse*, 3 T. R. 365; *Morse* v. *Faulkner*, 1 Anstr. 11; *Doe dem. Ibbott* v. *Cowling*, 6 T. R. 63; *Doe dem. Blacksell* v. *Tomkins*, 11 East, 185.) Some contrariety of

CHAP. VIII. *Of devises of copyholds.*

opinion appears to have existed, as to whether a surrender of *after-purchased copyholds* to the uses of a pre-existing will, would have been sufficient to pass them. This, it seems, it would have done whenever the will contained sufficient general descriptive terms to embrace them, and the surrender was made to uses already declared, or to be declared; the surrender being, in fact, a republication of the will: (*Denn dem. Harris* v. *Cutler*, cited Cow. 131; *Heylyn* v. *Heylyn*, Cow. 130; Lofft. 604; *Attorney-General* v. *Vigor*, 8 Ves. 286.) But if, on the other hand, the surrender was made to a future appointment, *as to such uses as the surrenderor shall by will appoint*, the after-purchased lands would not have passed by a will made previously, as no such intention would have been inferred where the surrender was made to the use of a will to be made at some future time: (*Warde* v. *Warde*, Amb. 299; see also *Spring* v. *Biles*, 1 T. R. 435, n. *f.*) Still, for all this, a surrender, although made to a future appointment, will be ineffectual as to subsequently acquired copyholds; it will nevertheless be effectual as to such as the surrenderor was possessed of at the time of making his will. This distinction was adopted in the case of *Spring* v. *Biles* (1 T. R. 435, n. *f*), where it was held that although copyholds purchased subsequently to the date of the will did not pass under a surrender to such uses as the testator by his last will and testament should appoint, yet that the copyholds of which he was seised at the time of making his will did pass by such surrender. And where a surrender is made to a future appointment, such appointment may be made by will without any fresh surrender to the use of that will: (*Cuthbert* v. *Lempriere*, 3 Mau. & Selw. 158, n. *a.*) An equity of redemption until the mortgagee was admitted could not have passed by an unsurrendered will, because until the admis-

sion of the mortgagee the lands were as much the subject of the surrender as they were before the mortgage: (*Floyd* v. *Aldridge*, 5 East, 137, cited; *Doe dem. Shewen* v. *Wroot*, 5 East, 138; *Kenebal* v. *Scrafton*, 8 Ves. 30; *Perry* v. *Whitehead*, 6 *ib.* 544; *Wainwright* v. *Elwell*, 1 Mad. 627.) But after the admittance of the mortgagee, the mortgagor, having a mere trust estate, might have devised the same by an unsurrendered will: (*Macnamara* v. *Jones*, 1 Bro. C. C. 481; *King* v. *King*, 3 P. Wms. 360; *Strudwicke* v. *Strudwicke*, *ib.* n. 1, Cox's edit.; *Greenhill* v. *Greenhill*, Gilb. Eq. Rep. 79; *Brent* v. *Best*, 1 Vern. 69; see also *Martin* v. *Mowlin*, 2 Burr. 979.) Nor would the accession of the legal fee have affected the equitable estate previously devised: (Wat. Cop. 124, 125.)

3. *When Equity would have supplied a Surrender.*

Equity would have supplied a surrender in favour of certain objects.

In certain cases, where a surrender was requisite to give validity to the will, a court of equity, by analogy to the aid it affords in instances of a defective execution of a power, would have supplied that omission: as in favour of a WIFE (*Strode* v. *Falkland* (*Lord*), 3 Cha. Rep. 187; *Biscoe* v. *Cartwright*, Gilb. Eq. Rep. 121; *Tollet* v. *Tollet*, 2 P. Wms. 489; *Hawkins* v. *Leigh*, 1 Atk. 388; *Smith* v. *Baker*, *ib.* 385; *Taylor* v. *Taylor*, *ib.* 386; *Roome* v. *Roome*, 3 *ib.* 181; *Goodwin* v. *Goodwin*, 1 Ves. 228; *Byas* v. *Byas*, 2 *ib.* 164; *Tudor* v. *Anson*, *ib.* 582; *Marston* v. *Gowan*, 3 Bro. C. C. 170; *Chapman* v. *Gibson*, *ib.* 229; *Rumbold* v. *Rumbold*, 3 Ves. 65; *Hills* v. *Downton*, 5 Ves. 557; *Church* v. *Mundy*, 12 Ves. 429; *Fielding* v. *Winwood*, 16 Ves. 90);—CHILDREN—(*Smith* v. *Aston*. 1 Cha. Cas. 263; *Hardham* v. *Roberts*, 1 Vern. 132; 2 *ib.* 164; *Kettle* v. *Towns-*

CHAP. VIII. *Of devises of copyholds.*

end, 1 Salk. 187; *Bradley* v. *Bradley*, 2 Vern. 163; *Croft* v. *Lister*, cited *ib.* 164; *Bath and Montague's case*, 3 Cha. Cas. 106; *Baker* v. *Jennings*, 2 Freem. 234; *Pope* v. *Garland*, 3 Salk. 84; *Strode* v. *Falkland* (*Lord*), 3 Cha. Rep. 187; *Watts* v. *Bullas*, 1 P. Wms. 60, and n. 1, 2, *ib.*; *Bullock* v. *Bullock*, 6 Vin. Abr. Cop. M. (*a*), pl. 19; *Burton* v. *Lloyd*, *ib.* pl. 20; S. C. 3 P. Wms. 285, n. *a*; S. C. 2 Bro. P. C. 281 (by name *Lloyd*, App. *Burton*, Resp.); *Weeks* v. *Gore*, 6 Ven. Cop. M. (*a*), pl. 24; *Suffolk* (*Earl of*) v. *Howard*, 2 P. Wms. 178; *Tollet* v. *Tollet*, *ib.* 489; *Carter* v. *Carter*, Mos. 370; *Andrews* v. *Waller*, 6 Vin. Cop. W. (*e*), pl. 12; *Hicken* v. *Hicken*, *ib.* M. (*a*), pl. 30; S. C. Ca. temp. Talb. 35; *Hawkins* v. *Leigh*, 1 Atk. 388; *Macey* v. *Shurmer*, *ib.* 389; *Roome* v. *Roome*, 3 *ib.* 181; *Goring* v. *Nash*, *ib.* 191; *Banks* v. *Denshaw*, *ib.* 585; *Goodwyn* v. *Goodwyn*, 1 Ves. 228; *Byas* v. *Byas*, 2 *ib.* 164; *Tudor* v. *Anson*, *ib.* 582; *Lindopp* v. *Eborall*, 3 Bro. C. C. 188; *Chapman* v. *Gibson*, *ib.* 229; *Pike* v. *White*, *ib.* 286; *Rumbold* v. *Rumbold*, 3 Ves. 65; *Hills* v. *Downton*, 5 *ib.* 563; *Blunt* v. *Clitherow*, 10 Ves. 589; *Garn* v. *Garn*, 16 *ib.* 228; *Pennington* v. *Pennington*, 1 Ves. & Bea. 406; *Sampson* v. *Sampson*, *ib.* 337; *Braddick* v. *Mattock*, 6 Madd. 361); — or CREDITORS — (*Challis* v. *Casburn*, Pre. Cha. 407; S. C. Gilb. Eq. Rep. 96; 1 Eq. Ca. Abr. 124; *Pope* v. *Garland*, 3 Salk. 84; *Strode* v. *Falkland* (*Lord*), 3 Cha. Rep. 187; *Drake* v. *Robinson*, 1 P. Wms. 443; *Harris* v. *Ingledew*, 3 *ib.* 98, and n. 2; *Hazlewood* v. *Pope*, *ib.* 322; *Mallabar* v. *Mallabar*, Ca. temp. Talb. 78; *Attorney-General* v. *Mott*, 2 Eq. Ca. Abr. 234, pl. 23; *Car* v. *Ellison*, 3 Atk. 73; *Roome* v. *Roome*, *ib.* 181; *Ithell* v. *Beane*, 1 Ves. 215; *Byas* v. *Byas*, 2 Ves. 164; *Tudor* v. *Anson*, *ib.* 582; *Coombes* v. *Gibson*, 1 Bro. C. C. 273; *Bixley* v. *Eley*, 2 *ib.* 325; *Lindopp* v. *Eborall*,

3 *ib.* 188; *Chapman* v. *Gibson*, *ib.* 229, n. 1; *Watts* v. *Bullas*, 1 P. Wms. 60; *Kentish* v. *Kentish*, 3 Bro. C. C. 257; *Growcock* v. *Smith*, 2 Cox, 397; *Hills* v. *Downton*, 5 Ves. 563; *Kidney* v. *Cousmaker*, 12 Ves. 136; *Pennington* v. *Pennington*, 1 Ves. & B. 406); which equity is equally applicable to lands of gavelkind and borough English tenure: (*Bradley* v. *Bradley*, 2 Vern. 165; *Cooper* v. *Cooper*, *ib.* 265; *Byas* v. *Byas*, 2 Ves. sen. 164.)

Equity would not have supplied a surrender unless the necessity or justice of the case required it.

The ground of this equitable interference was a legal and moral obligation; and therefore equity would not have interfered in a capricious or arbitrary manner, unless the necessity or justice of the case demanded it, nor have assisted to disinherit the heir, where it was equally consistent with justice that he should have succeeded to the property (Wat. Cop. 133; Gilb. Ten. 157, n. *k*, 412); consequently, although the surrender would have been supplied in favour of the creditors, this case would only have extended to the amount of the debts, the heir having at least equal equity with the devisee, and therefore his legal right would have prevailed: (*Compton* v. *Collinson*, 2 Bro. C. C. 386; 3 *ib.* 171; Wat. Cop. 141; Scriv. Cop. 271.) Nor would a surrender have been supplied in favour of natural children (*Tudor* v. *Anson* 2 Ves, 282; *Holmes* v. *Coghill*, Fearne Posth. Works, 328; *Crickett* v. *Dolby*, 3 Ves. 12; *Fursaker* v. *Robinson*, 12 Ves. 209), or of a brother or sister; so that it was of course excluded in favour of a nephew, niece, cousin, or more remote relations (*Goodwyn* v. *Goodwyn*, 1 Ves. 228; *Strode* v. *Falkland* (*Lord*), 2 Vern. 605; *Marston* v. *Gowan*, 3 Bro. C. C. 169; *Rogers* v. *Downs*, 9 Mod. 292; *Judd* v. *Pratt*, 13 Ves. 168; 15 *ib.* 30), and still more so of strangers or volunteers, as a devisee or legatee (*Floyd* v. *Wallis*, cited 5 East, 137); nor even in favour of the wife and children, if

CHAP. VIII. *Of devises of copyholds.*

the will contained a provision for them: (*Ross* v. *Ross*, 1 Eq. Ca. Abr. 124, pl. 14; *Lindopp* v. *Eborall*, 3 Bro. C. C. 188; *Tudor* v. *Anson*, 2 Ves. sen. 582.) It was also decided in the House of Lords that a surrender would not even be supplied in the case of a grandchild (*Kettle* v. *Townsend*, 1 Salk. 187; 1 Eq. Ca. Abr. 123); and, notwithstanding this decision was often disapproved of (*Watts* v. *Bullas*, 1 P. Wms. 61; *Freestone* v. *Rant*, 1 P. Wms. 61, n. †; *Fursaker* v. *Robinson*, 1 Eq. Ca. Abr. pl. 9), and its authority even doubted (*Hills* v. *Downton*, 5 Ves. 563), Lord Eldon held that the rule laid down by the House of Lords could not be reversed in a court of equity, but must remain till altered by the House. At the same time, although he dismissed the bill, he refused to give costs; observing, it was impossible to do so where the plaintiffs had so much encouragement from *dicta:* (*Perry* v. *Whitehead*, 6 Ves. 544.) These questions are, however, only applicable to the wills of copyholders dying previously to the statute of 55 Geo. 3, c. 192, already referred to, which dispenses with the necessity of a surrender to the use of a will. And even as to wills made previously, if the possession has been long peaceably held—as, for forty years, for instance, a surrender will be presumed: (Wat. Cop. 144; *Knight* v. *Adamson*, 1 Freem. 106; *Lydford* v. *Coward*, 1 Vern. 195; *Wilson* v. *Allen*, 1 Jac. & Walk. 620.)

4. *Operation of statute* 55 *Geo.* 3, *c.* 192, *on Wills of Copyholds.*

Surrender to use of will how far dispensed with.

The necessity of a surrender to the use of a will was dispensed with by the statute of the 55 Geo. 3, c. 192, by which it is enacted that devises of copyhold shall be good without surrender to the use of a will: (sect. 1.) It how-

ever provides that the same duties and fees shall continue payable as have been paid on surrenders: (sect. 2.) The act is not to render invalid any devise or disposition that would have been valid; nor to render valid such as would have been invalid if a surrender had been made to the use of the will: (sect. 3.) This statute, it has been determined, supplies a surrender only in point of form, and therefore does not render copyholds devisable which were not so otherwise, or supply an act necessary to give validity to the devise beyond the simple act of surrender. Hence if a *feme covert* were incapable of devising her copyhold land, except through the medium of a surrender to will under the sanction and protection of the private examination by the lord or steward as to her uncontrolled assent, the act will not supply a surrender unaccompanied with these formalities—this being a surrender in substance, intended to protect the acts of a married woman, which protection the Legislature did not intend to deprive her of: (*Doe dem. Nethercote* v. *Bartle*, 5 Barn. & Ald. 492; S. C. 1 Dow. & Ry. 81.) How far this statute would be operative upon a general devise of lands where the testator had both freehold and copyhold property, seems to have been a matter of some doubt. Before the statute, unsurrendered copyholds would not have passed under a general devise of lands, unless the testator had no freeholds upon which the will could operate (*Byas* v. *Byas*, 2 Ves. sen. 164; *Hawkins* v. *Leigh*, 1 Atk. 287; *Smith* v. *Baker*, *ib.* 385; *Car* v. *Ellison*, 3 *ib.* 73; *Lindopp* v. *Eborall*, 3 Bro. C. C. 188; *Tudor* v. *Anson*, 2 Ves. sen. 582; *Church* v. *Mundy*, 12 Ves. 426; S. C. 15 *ib.* 396; *Milbourn* v. *Milbourn*, *ib.* 400; *Nichols* v. *Butcher*, 18 *ib.* 193; *Hodgson* v. *Merest*, 9 Pri. 556; *Pennington* v. *Pennington*, 1 Ves. & Bea. 406), and then only

Statute 55 Geo. 3, c. 192, supplies surrender only in point of form and not in substance.

Doubtful how far statute would have operated on a general devise of lands where the testator possessed both freeholds and copyholds.

CHAP. VIII. *Of devises of copyholds.*

in favour of wife, children, and creditors (as to which see *ante*, p. 52.) But surrendered copyholds would have passed under such general devise: (*Scott* v. *Albery*, Com. Rep. 337; *Tendril* v. *Smith*, 2 Atk. 85; *Goodwyn* v. *Goodwyn*, 1 Ves. sen. 226.) Now the statute of the 55 Geo. 3, c. 192, by dispensing with the necessity of a surrender, places freeholds and copyholds *in pari passu* with regard to the operation of a general devise; or, in other words, places unsurrendered copyholds in the same situation, with respect to the operation of a general devise, as surrendered copyholds would have been prior to the passing of the act. This certainly seems to be the better opinion (see 2 Jarm. on Wills. 121, *et seq.*), though some gentlemen of eminence have expressed strong doubts upon the point. Now, under the recent Will Act, 1 Vict. c. 26, a general devise of the testator's lands is made to include copyholds, unless a contrary intent shall appear by the will: (sect. 26.) Another doubt arising upon the construction of the statute 55 Geo. 3, was, whether it would embrace an unadmitted heir-at-law; but the better opinion seems to be that it would have done so, because he is a complete tenant before admittance, against all persons except the lord, in respect of his fine. An unadmitted purchaser, having only an equitable interest, might, as already stated, have devised his interest without a surrender, even independently of the statute; but an unadmitted devisee could not have done so, the latter having, as we have already seen, no equitable title distinct from his incomplete legal title: (*Wainwright* v. *Elwall*, 1 Madd. 637.) Neither is he a "copyhold tenant" within the meaning of the act, which therefore confers no more devising power upon him than he enjoyed previously.

5. *Alterations effected by recent Enactments.*

Operation of stat. 1 Vict. c. 26, on wills of copyholds.

The recent Will Act (1 Vict. c. 26, s. 3), after enacting that all copyholders may devise without surrender, empowers unadmitted heirs or devisees to devise their copyhold estates: (sect. 3.) The same fees and fine are, however, payable, as if the surrenders and admissions had been all actually made: (sect. 4.) And all wills, or extracts of wills, of copyholds or customary freeholds, are required to be entered on the court rolls: (sect. 5.)

Distinction between copyholds and customary freeholds.

The chief distinction between customary freeholds and copyholds consists in the former being holden according to the custom of the manor, and not at the will of the lord, according to the custom of the manor: (*Hugh* v. *Harrys*, Cro. Car. 229; *Gale* v. *Noble*, Carth. 422; *Rogers* v. *Bradley*, 2 Ventr. 144; *Hill* v. *Bolton*, Lutw. 1171; *Crouther* v. *Oldfield*, *ib.* 125; S. C. 1 Salk. 365; 6 Mod. 19; 11 *ib.* 53; 2 Lord Raym. 1225.) Lord Coke styles these customary freeholds as copyholds of frank tenure, which, he observes, "are most usual in ancient demesne; though sometimes," he adds, "out of ancient demesne we meet with the like kind of copyholds; as in Northamptonshire there are tenants which hold by copy of court roll, and yet hold not at the will of the lord:" (Co. Cop. s. 32; see also Kitch. Cop. 159; Scriv. 666.) This omission to hold at the lord's will seems, however, to form the chief distinction which now exists between copyholds and customary freeholds, the latter of which, except when varied by custom, are subject to the general law of copyholds, although in some instances they are by custom transferable by deed and admittance, and not by surrender: (*Doe* v. *Huntingdon*, 4 East, 271; *Bowin* v. *Rawlins*, 7 East, 409.) But by whatever mode of assurance they may be transferred, the

CHAP. VIII.
Of devises of copyholds.

freehold will always remain with the lord. Still, for all this, where they pass by deed and admittance, they are considered as so far partaking of a freehold nature as to fall within the Statute of Frauds, and consequently could not, previously to the statute 1 Vict. c. 26, have passed by will, unless they were attested by three witnesses: (*Hussey* v. *Grills*, Amb. 299; *Wilan* v. *Lancaster*, 3 Russ. 108.)

SECTION VIII.

ANCIENT DEMESNE.

Of the different sorts of ancient demesne.

ANCIENT demesne consists of those lands or manors as were held in soccage of manors belonging to the crown in the time of Edward the Confessor or William the Conqueror, and so appear by Domesday Book: (F. N. B. 14; 2 Black. Com. 99; Kitch. 187, 190; *Jentleman's case*, 6 Co. 11, b.) There are said to be three sorts of tenants in ancient demesne:—1. Those who hold lands freely by grant of the king. 2. Those who hold of a manor which is ancient demesne, but not at the will of the lord, and who are in fact customary freeholders: and, 3. Those who hold of a manor which is ancient demesne, but at the will of the lord, like ordinary copyholders. The two former could only be impleaded in their lords' courts by a writ of right close, and if otherwise impleaded, they might have pleaded the tenure in abatement; but the third class of tenants, holding as copyholders at the will of the lord, were to sue by plaint in the lord's court. It was upon this writ of right close that fines and recoveries were formerly suffered of lands in ancient demesne; and a recovery suffered in a court of ancient demesne, according to the custom of the manor, was an effectual bar to the entail. A fine, indeed, might have been levied, or a recovery might have been suffered, in the Common Pleas; but then, as the operation of those proceedings in the latter court would have rendered the land frankfree so long as they remained

CHAP. VIII.

Ancient demesne.

in force, to the prejudice of the lord, he was enabled to reverse the same by writ of deceit.

Operation of Fine and Recovery Act upon lands in ancient demesne.

And now, by the Fine and Recovery Substitution Act (3 & 4 Will. 4, c. 74), fines and recoveries of lands in ancient demesne, when levied or suffered in a superior court, may be reversed as to the lord by writs of deceit, but will remain good and valid as against the conusors thereof, and all persons claiming under them, as such fines and recoveries would have been if the same had not been so reversed by such writ of deceit: (sect. 4.) It next proceeds to enact that fines and recoveries of lands in ancient demesne, levied or suffered in the manor court, after other fines and recoveries suffered in any of the superior courts, shall be as valid as if the tenure had not been changed; and that in every other case fines and recoveries, though levied or suffered in those courts whose jurisdiction may not extend to the lands comprised therein, shall not be invalid on that account: (sect. 5.) And it further enacts, that in every case where the tenure of ancient demesnes has been suspended or destroyed by fine or recovery in a superior court, and the lord should not have reversed the same before the 1st of January, 1834, and should not, by any law in force on the first day of the then present session of Parliament, be barred of his right to reverse the same, such lands, provided within the last twenty years immediately preceding the 1st of January 1834 the right of the lord shall have been acknowledged or recognized, shall again become parcel of the manor and become subject to the same rents, heriots and services, as they would have been subject to if such fine or recovery had not been levied or suffered; and that no writ of deceit for the reversal of any fine or common recovery should be brought after the 31st of December, 1833: (sect. 6.)

SECTION IX.

CUSTOMARY LANDS OF THE ANCIENT DUCHY OF CORNWALL.

Customary tenure of the ancient duchy of Cornwall.

BEFORE I take leave of this part of my subject, it will be proper to make a few remarks upon some important alterations that have been made in the customary lands of the ancient duchy of Cornwall, by the recent statute, 7 & 8 Vict. c. 105. These lands are holden of certain manors, termed assessionable manors, of which the Duke of Cornwall is the lord, under a charter granted by King Edward the Third. The estates of the tenants are styled conventionary tenements, and were held under grants made and renewed at the assession courts, once in seven years, upon surrender and admittance of the tenant, being considered to be held as customary estates of inheritance, with a perpetual right of renewal.

Appointment of commissioners to adjust disputes respecting.

Latterly, however, disputes arose between the officers of the duchy and the conventionary tenants with respect to the minerals, which although undoubtedly the property of the Duke of Cornwall, his right to enter on the tenements for the purpose of working any mines was disputed; and in consequence of these misunderstandings, and it seems, also, some differences respecting the boundaries, no assessionable courts were held subsequently to the year 1833. At last, commissioners were appointed to ascertain the rights of the different parties; and, to carry

CHAP. VIII.

Customary lands of the ancient duchy of Cornwall.

out this important object, the act now under consideration was framed. This act (7 & 8 Vict. c. 105) recites, first, the facts just before alluded to, and that it was expedient that the estates of the tenants in the conventionary tenements should be converted into freehold, on the terms and conditions thereinafter mentioned; and that the rights of the Duke of Cornwall, and all other persons, in respect of the mines, minerals, stone, and substrata of the said conventionary tenements, should be established and regulated, which could not be effected without the aid and authority of Parliament.

Estates of conventionary tenants confirmed.

It then proceeds to confirm the estates of the conventionary tenements, granted at the last assession courts for the manors mentioned in the first schedule annexed to the act, and which, if duly renewed, would have been held as such conventionary tenements, continuously for sixty years or more, before the 1st of May, 1844, and for the same estates and interests as the same would have been held, if the grants thereof had been duly renewed; but subject, nevertheless, to the accustomed fines for renewal, heriots, rents, payments, fees, and services; and subject to all existing rights of the Duke of Cornwall, and his lessees, and other persons claiming under him, with respect to mines, minerals, stone, and substrata: (sect. 1.) It next proceeds to appoint commissioners to inquire and ascertain what lands and tenements in the several manors mentioned in the schedules annexed to the said act, were held as conventionary tenements, and the boundaries, identity, and situation of all such tenements, for the period therein set forth (sects. 2 to 31); and directs the commissioners, when they shall have made all such inquiries, to make an award in writing under their hands, and to annex to such award a map or maps, and thereby to distinguish, specify, and

Appointment of commissioners.

Commissioners to make their award in writing.

determine what lands and tenements had been holden as conventionary tenements within the said several manors respectively for the last sixty years: (sect. 31.) And such award is declared to be binding and conclusive on the Duke of Cornwall, and all persons whomsoever: (sect. 40.)

Award of commissioners to bind.

And all and singular the tenements therein determined to be conventionary are made of freehold tenure, and to be for ever thenceforth held of the Duke of Cornwall in free and common soccage of the manor of which the same tenements had theretofore been held; charged, however, with the payment to the Duke of Cornwall, as lord of such manors respectively, of all arrears of rents, fines, acknowledgments, heriots, fees, payments, or services, and of such annual sum as should be directed to be payable thereout respectively, and that the Duke of Cornwall should have the same remedies for recovering the same as for rent reserved on a demise: (sect. 41.) The act does not, however, confirm conventionary tenements first granted within sixty years (42); still it provides that where such grants have been made, if it shall appear to the Duke of Cornwall that the circumstances under which such grant has been made are such as would reasonably and fairly entitle the person in possession, by virtue of such grant, to compensation for the loss of his beneficial interest in respect thereof, then it should be lawful for the Duke of Cornwall to grant or demise such conventionary tenement to such person for such term, estate, or interest, and subject to such rent, reservations, conditions, and agreements, as to the said Duke of Cornwall shall seem to be just and reasonable in reference to such circumstances as aforesaid; but so, nevertheless, that all tenements so granted or demised shall continue and be part and parcel of the demesne lands of the manor within which the

All tenements determined to be conventionary converted into soccage tenure.

Act does not confirm conventionary tenements first granted within sixty years.

CHAP. VIII.

Customary lands of the ancient duchy of Cornwall.

same are situate, and shall be held of the same manor accordingly: (sect. 43.)

Commissioners may award lands in compensation of common of pasture or of turbary.

The commissioners are also empowered to award lands in compensation of common of pasture, or of turbary: (sect. 44.)

Tenements so converted into soccage to stand limited to the same uses as before.

And immediately after the said award, every conventionary tenement which should thereupon become holden in free and common soccage, should stand limited and settled to such uses, upon such trusts, and such powers, provisoes, and agreements, as should most nearly correspond with the interests, uses, and trusts, which, before the making of such award, were, according to the custom of the said manor, subsisting, or capable of taking effect in such conventionary tenement; but so, nevertheless, that (subject and without prejudice to such estates, interests, uses, powers, provisoes, and agreements, as shall be then subsisting and capable of taking effect) every such tenement, and every estate and interest therein, shall, at all times after the making of the said award, descend, devolve, be conveyed and assured, according to and in every respect subject to the laws according to which other tenements holden in free and common soccage descend, devolve, are conveyed and assured, and subject; and that every such freehold tenement, and every estate and interest therein, should be subject and liable to all claims and demands, if any, to which the conventionary tenement out of which the same was converted was subject or liable immediately before such conversion, other than claims and demands by the Duke of Cornwall, as lord of the manor of which the same is held: (sect. 46.)

All minerals to belong to the Duke of Cornwall, who may work the same on making

The act afterwards enacts, that all mines and metallic minerals under the conventionary lands are to belong to the Duke of Cornwall (sects. 53, 54), who is hereby empowered to enter and work them, making compensation for the damage to the

surface, and for use of stone and water (sect. 55); which compensation, in case of dispute, is to be settled by two justices, or by the vice-warden, at the option of the party liable: (sects. 56, 57.)

compensation for surface damage.

But where such entry is to be made for the purpose of working mines of any but the waste lands, the Duke of Cornwall is directed to give one calendar month's previous notice in writing of such intended entry to the occupier of such lands: (sect. 60.)

But where entry is made other than on the wastes, duke must give one calendar month's previous notice of entry.

And all lessees or other persons (other than the Duke of Cornwall), who shall intend to enter as aforesaid, other than on the waste lands, may be compelled to give security for any surface damage he may do to the property: (sect. 61.)

Lessees of the duchy may be compelled to give security for surface damage.

But the Duke of Cornwall himself is not to be liable for any damage done by his lessees (sect. 66); nor is any compensation to be allowed for damage done to the waste or demesne lands.

Duke not liable for damage done by his lessees, nor for damage done to wastes.

The Statutes of Limitation were for the most part considered inapplicable to the lands and possessions of the duchy of Cornwall, to remedy which the above-mentioned stat. of 7 & 8 Vict. enacts, that the claims of the Duke of Cornwall shall generally be barred at the end of sixty years (sect. 71); that his claims shall not be kept alive by putting a manor in charge of which the land shall be part (sect. 72); that his claims to mines shall be barred by the possession of the land and exclusively working the mines for sixty years (sect. 73), or by the absolute possession of the land, independently of the Duke of Cornwall, for 100 years: (sect. 74.) But time, as to reversions, is not to begin to run till they fall into possession (sect. 76); nor to hereditaments which have been granted for limited estates, until such estates fail: (sect. 77.) Neither will this act bar

Claim of duchy how barred by Statute of Limitations.

CHAP. VIII.

Customary lands of the ancient duchy of Cornwall.

the duke as to the property comprised in the award (sect. 81); nor affect the privilege of tinners (sect. 84); nor extend to the royalties, liberties, offices, &c., let in convention; nor to navigable rivers, estuaries, branches of the sea or seashore (sect. 86); nor affect the act of 2 & 3 Will. 4, c. 100, for shortening the time required in claims of *modus decimandi*, &c.: (sect. 87.)

CHAPTER IX.

ON INCUMBRANCES.

I. Of the various Kinds of Incumbrances.

1. *Incumbrances which are Matters of Title.*
2. *Incumbrances which are Matters of Conveyance only.*

II. Of Protection against prior and intermediate Estates and Incumbrances.

1. *Protection at Law.*
2. *Protection in Equity.*
3. *Of Notice.*

I. Of the various Kinds of Incumbrances.

1. *Incumbrances which are Matters of Title.*
2. *Incumbrances which are Matters of Conveyance only.*

As to the nature of the different kinds of incumbrances.

Having said thus much about estates in real property, and the terms by which they may be created, settled, and disposed of, it next becomes my duty to offer some remarks upon incumbrances. This subject affords matter of most important consideration in the investigation of titles, and the nature and quality of every kind of incumbrance ought to be thoroughly understood, as also how far courts of law and equity

CHAP. IX. *Of various incumbrances*

will interpose to protect a purchaser against them; for upon this doctrine must the practicability of conferring a marketable title oftentimes depend. If the incumbrances are of that nature that the vendor is unable to discharge the property from them, they must prove a fatal objection to the title. But if, on the other hand, he can obtain a release or conveyance from the incumbrancers, the objection will then become merely matter of conveyance, which may be cured by the incumbrancers joining in the assurance: (3 Prest. Abs. 284.) By the concurrence, indeed, of the necessary parties, most incumbrances, even that are matters of title, may be gotten rid of; but as the vendor has not the power of commanding this concurrence, the purchaser will be entitled to treat the title as unmarketable, whenever this defect occurs, and to abandon the contract accordingly.

What incumbrances are matters of title, and what of conveyance.

Incumbrances which are matters of title may be ranked under the following heads:—Executory devises, conditional limitations, conditions at common law, remainders not barrable (as remainders in a settlement, which are supported by a protector), leases, jointures, dower, curtesy, annuities and rent-charges, bankruptcy and insolvency in the vendor, forfeitures, and powers. Incumbrances which are merely matters of conveyance may be classified as mortgages, crown debts, judgments, statutes, recognizances, decrees, *lis pendens*, debts, portions, and legacies; and the legal estate being outstanding in trustees, satisfied mortgagees, or the trustees of attendant terms.

1. *Incumbrances which are Matters of Title.*

Executory devises and conditional limitations.

An executory devise cannot, generally speaking, be barred by the first taker; consequently, where an estate is limited to one in fee-simple.

with a limitation over by way of executory devise, no act of such first taker can bar such executory limitation over: (*Pells* v. *Brown*, Cro. Jac. 590.) But where the executory limitation over is to arise after an estate tail, it would then be in the nature of a conditional limitation; and in that case a recovery would formerly, and a disentailing deed will now (unless there be a protector to the settlement who refuses his consent), effectually bar the estates depending on that event or condition, provided the assurances were completed before the event or condition takes place: (*Page* v. *Hayward*, 2 Salk. 570; *Gulliver dem. Corrie* v. *Ashby*, 4 Burr. 1929; *Fountain* v. *Gooch*, 4 Bac. Abr. (D); *Driver dem. Edgar* v. *Edgar*, Cow. 379.)

Conditions at common law.

A condition at common law also forms a fatal objection to a title, because no act of the party whose estate is burdened with it can defeat such condition; nor has he any power to compel the party entitled to the benefit of it to release his right therein, however large the amount of compensation he may offer. Still it is not such a defect as to be absolutely without remedy, for if the party entitled to the benefit of the condition is labouring under no legal disability, and chooses to release his claim and interest, he may clearly do so, and then the defect will be cured. The existence of a protector to a settlement, who refuses to consent, will always be a fatal objection to a title, as, without such consent, nothing more than a base fee can be conveyed to the purchaser, and no court of law or equity can compel such protector either to give or withhold his consent to the disposition of the tenant in tail: (stat. 3 & 4 Will. 4, c. 74, ss. 34, 35, 36, 37.)

Leases.

Mr. Preston, in his valuable Treatise on Abstracts, p. 400, remarks that "leases are, or are not, to be considered as incumbrances, according to the terms of the contract. Sometimes the

CHAP. IX. *Of various incumbrances*

object is to obtain the possession, or for the sake of granting a lease for the utmost value to the old or to a new tenant. Under these circumstances, a lease which deprives a purchaser of the possession, or which deprives him of the right to have the full value from the tenant, is an incumbrance of the most serious nature. In some instances," he adds, "such an incumbrance is a fit subject for compensation by abatement of the purchase-money; in other instances, as where a farmer or a gentleman buys for occupation, it is a ground for a court of equity to rescind the contract, or to withhold relief when the vendor applies for a specific performance."

Possession of a tenant constructive notice of the terms of the lease.

It does not, however, appear that questions have often arisen upon this subject, the cause of which is probably owing to the circumstance of its being well known to the Profession, that the simple act of possession by a tenant is constructive notice of a lease, and the terms under which it is held; and this renders it incumbent on a purchaser to take notice of the nature and extent of the tenant's interest, which if he fails to do, he must abide by the consequences of his neglect: (*Taylor* v. *Stibbert*, 2 Ves. 437; *Denn* v. *Cartwright*, 4 East, 29.)

Jointures, dower, annuities, and rent-charges.

Jointures, dower, curtesy, annuities, and rent-charges are matters of title; for parties so entitled have a right independently of the vendor, and are under no obligation, or capable of being compelled by him, to concur in the conveyance, or to release their interest in the property, whatever compensation he may offer them for so doing; and whenever the concurrence of a party is requisite, who is not bound to join, the title can never be considered perfect, until it be shown that such concurrence has been given: (*Lewin* v. *Guest*, 1 Russ. 325, 329; and see *Elliott* v. *Merryman*, Barnard. 82; *Wynn* v. *Williams*, 5 Ves. 130; *Page* v. *Adam*, 10 L. J. 407, N. S.)

Prior to the late Dower Act (stat. 3 & 4 Will. 4, c. 105), a widow would have been entitled to dower out of all the real estate of which her husband was seised as of an estate of inheritance during the coverture. This right the husband could not have defeated by any act of alienation; consequently, under the old law, whenever a right of dower had attached, a fine was always required to be levied by the vendor and his wife, for the purpose of barring her right. Now, a purchaser is entitled to call for an acknowledgment by her at the vendor's costs, under like circumstances.

How widow might have been debarred of dower.

Previously, however, to the late Dower Act (3 & 4 Will. 4, c. 105), a widow might have been debarred of her right of dower by the estate having been conveyed to uses to bar dower, or by a jointure, or by the assignment of an attendant term to attend the inheritance. To debar the widow her right, through the latter means, it was, however, necessary that the term should have been actually assigned, for if merely left outstanding, it would have been insufficient: (*Maundrell* v. *Maundrell*, 7 Ves. 567.) And now, by the statute 8 & 9 Vict. c. 112, all satisfied terms are made to cease, so that no satisfied term can now be assigned so as to operate as a protection against dower.

Jointure a good bar to dower.

With respect to a jointure also, although it will be a good bar to dower, yet this rule will only hold so long as the widow retains her jointure, for if she be evicted from it, she may then claim her dower out of any lands of which she would have been dowable in case no jointure had been made: (Stat. of Uses, 27 Hen. 8, c. 7; *Mansfield's case*, Harg. Co. Litt. 33, *a*; *Gervoyes' case*, Mo. 717, pl. 1002; *Simpson* v. *Gutteridge*, 1 Mad. 609.) So that when a wife will not acknowledge the purchase deed, and a jointure is relied upon as a bar to dower, it will not be sufficient merely to ascertain that the vendor can make a good

CHAP. IX. *Of various incumbrances*

title to the lands intended to be conveyed, but it must be shown that the title to the lands settled by way of jointure is also unimpeachable. The amount of provision made by way of jointure will not, however, be material, provided the jointress was of full age at the time it was made, as equity considers any provision made by way of jointure, and which an adult woman accepts as such, however inadequate, previously to her marriage, will be a good equitable jointure (*Jordan* v. *Savage*, Bac. Abr. tit. "Jointure" (B), 5; *Charles* v. *Andrews*, 9 Mod. 152; *Williams* v. *Chitty*, 3 Ves. 545); and even a provision made for the maintenance of a wife after her husband's death, although not expressed to be made in bar of dower, was yet holden to be a bar in equity to her claim to dower: (*Vizard* v. *Longdale*, 3 Atk. 8, cited; S. C. 2 Kel. Ch. Cas. *sub nom. Vizod* v. *London.*) But where the jointress was an infant at the time of the settlement, the jointure will not be binding upon her, unless the settled estates are equally certain as her dower. Hence a settlement of an estate by way of jointure upon an infant for life, after the death of her husband, *and any third party*, will not be considered a good bar to her dower; because the third party may survive her, and thus she may never come into the enjoyment of the property: (*Carruthers* v. *Carruthers*, 4 Bro. C. C. 500; *Smith* v. *Smith*, 5 Ves. 189; 5 Russ. 524.) But if she was adult at the time she entered into the settlement, she will be bound by it, notwithstanding the precarious nature of the property she consented to have settled upon her.

Husbands married prior to 1834 enabled to defeat their wives' dower.

As to husbands married subsequently to 1833, they can, as we have already seen, defeat their wives' claim to dower, by any disposition in their lifetime, or by their wills: (stat. 3 & 4 Will. 4, c. 105, ss. 4, 5, 6, 7.)

Bankruptcy, insolvency, forfeiture, &c.

Bankruptcy and insolvency of the vendor will also be a fatal objection to the title, as the bank-

rupt or insolvent has no longer a power of disposition over the property. The like observations are also applicable to persons who have done any act that would cause a forfeiture of their estate.

Powers, how far incumbrances.

Whether or not a power is to be treated as an incumbrance, will depend upon whether it is vested in the vendor, or in a third party. If vested in the former, as he may extinguish it by his appointment, it will be no incumbrance. But when the power is vested in a third party, then to the extent to which such power may be exercised, it must be considered as an incumbrance, and to that extent the title must be treated as defective, which defect can only be got rid of where an effectual release can be obtained of the benefit to arise from such power (3 Prest. Abs. 287); and it seems that, where a power is wholly collateral, or, in other words, is conferred upon a person who has no estate or interest in the land, it is incapable of being released or extinguished by any mode of assurance whatever, though it is clearly otherwise with regard to powers appendant or in gross: (*Albany's case*, 1 Rep. 110, n. *b; Digge's case, ib.* 173, n. *a; Edwards* v. *Slater*, 3 Bulstr. 30; *Bird* v. *Christopher*, Sty. 389; *King* v. *Melling*, 1 Ventr. 225; *Savile* v. *Blacket*, 1 P. Wms. 777.)

Distinction between the several kinds of powers.

It will not, therefore, be irrelevant in this place to attempt to point out the distinction between these several kinds of powers, which may be classified either as collateral powers, powers appendant, or powers in gross.

Collateral powers.

A collateral power is where the party to whom it is limited takes no estate or interest whatever in the land—as, for example, where a power is given to executors to sell their testator's real estate.

Power appendant.

A power appendant is where the use or estate to be created by the power takes effect in possession during the continuance of an estate which

the donee hath in possession or remainder, and therefore wholly or partially overreaches it; as in the instance of the power usually reserved in settlements to tenants for life to make leases, or to sell or exchange the settled property.

Powers in gross.

Powers in gross are where the person in whom they are vested has an estate in the lands, but the estate to be created under the power is not to take effect until such estate is determined, and therefore does not, as in the instance of an appendant power, overreach the estate of the donee. Such is the power of jointuring commonly inserted in marriage settlements: (*Edwards* v. *Slater*, Hard. 410.)

Same power is sometimes a power appendant with respect to one estate, and a power in gross with respect to another.

And where a person takes distinct estates under the same settlement, the same power is sometimes a power appendant with respect to one estate, and a power in gross with respect to the other. Thus, where lands are limited to the use of A. for life, remainder to his sons successively in tail, with remainder to the heirs of his body, with a power to jointure and to create a term for securing the same, these powers in respect to A.'s estate for life are powers in gross; and in respect of his remainders in tail, are powers appendant: (Co. Litt. 342, b. n.; Com. Dig. 146.) It would also seem that a power for a tenant for life to appoint his estate amongst his children would also fall within the terms of a power in gross, because, like a jointure, it is not to take effect until after the determination of the donee's estate; still, for all this, the Profession were formerly in the habit of treating it as a collateral power, or a mere right of selection amongst certain objects, and incapable of being extinguished by any act of the donee, and many titles were objected to in consequence. But this doctrine has been completely overruled by recent decisions, which have expressly determined that a power of this kind may be destroyed: (*Horner* v. *Swann*, 1 Turn

& Russ. 430; *Bickley* v. *Guest*, 1 Russ. & Myl. 440; *Smith* v. *Death*, 5 Madd. 371; 1 Bligh, 15.) In point of fact, no difference in quality exists between a power for a tenant for life to make a jointure after his death, or to appoint amongst his children at that period. Both confer a power of selection or specification; neither the one nor the other takes effect out of his interest, for the estates appointed cannot possibly take effect until his interest is determined; but both taking effect after that determination are powers in gross, and not powers *collateral*, and may be extinguished by release to any one who has an estate of freehold in the lands, whether in possession or reversion: (*Albany's case*, 1 Rep. 110; *West* v. *Berney*, 1 Russ. & Myl. 431; *Bickley* v. *Guest*, *ib.* 440.)

All estates which the power cannot overreach are incumbrances.

Mr. Preston observes, that as often as a title is derived under a power, it is of importance to treat as incumbrances all estates which cannot be overreached and defeated by the exercise of it. For, as he justly proceeds to remark, the power may overreach some of the estates without affecting others of them; as in the instance of a title in which A. is tenant for life, with remainder to B. in fee, and there is a settlement by both of them to the use of A. for life, with various remainders over, with a power to sell without prejudice to the estate for life, or with a power to revoke all the uses, except the uses by which the estate for life is limited; which, he adds, is only one of the numerous and almost infinite examples which might be adduced on this point: (see 3 Prest. Abs. 287.)

2. *Incumbrances which are Matters of Conveyance only.*

Incumbrances which are

Incumbrances, however great in amount, form no objection to the title where it is in the ven-

CHAP. IX.

Of various incumbrances

dor's power to get them in, or to compel the incumbrancer to join in the conveyance, notwithstanding such charges should exceed the actual amount of the purchase money: (*Townsend* v. *Champernown*, 1 You. & Jerv. 449.)

matters of conveyance form no objection to the title.

Mortgages.

It seems that mortgages were formerly considered to form not only a matter of conveyance, but of title also; but they are now determined to be merely matter of conveyance; consequently, where an estate is contracted to be sold free from incumbrances, and upon the abstract of title it appears that the estate is subject to a mortgage, it will form no objection to the title; because it is in the power of the mortgagor, until barred by foreclosure, to compel the mortgagee to reconvey, on payment of principal, interest and costs: (*Stephens* v. *Guppy*, 1 You. & Jerv. 450, cited; *Rawson* v. *Tasburgh*, *ib.* cited; *Townsend* v. *Champernown*, *ib.* 449.) But it seems that if, by the terms of the mortgage, the mortgagor is, by his own act and deed, precluded from compelling the mortgagee to reconvey,—as where, by the terms of the mortgage, the mortgage is not to be redeemed until the expiration of some specified period, which will not expire before the time of completing the contract,—then the mortgage will become a matter of title; the mortgagor having no power to compel the mortgagee to reconvey before such specified period shall have elapsed, and without the mortgagee's concurrence no legal title can possibly be conveyed.

Crown debts.

Formerly the crown had a lien on the real estate of all receivers, being immediate accountants, or their sureties, not merely from the time of their appointment to the office (*Attorney-General* v. *Risby*, Hard. 378; *Dodington's case*, Cro. Eliz. 545; *Nicholls* v. *How*, 2 Vern. 389; *Brassey* v. *Dawson*, 2 Str. 978; *Wilde* v. *Forte*, 4 Taunt. 334), but even when the debt had been contracted subsequent to the alienation (10 Co.

55, 56; *Rex* v. *Rawlings*, 12 Pri. 834), upon the principle (though rather a harsh one, it must be confessed, as far as an innocent purchaser is concerned) that all lands being held mediately or immediately of the crown, are considered as bound for the payment of such debt, in just the same manner as if there had been a reservation to that effect on the original grant: (Bac. Abr. tit. "Execution;" Cross on Lien, 121.) Nor could even a term of years assigned to attend the inheritance have been relied on as a protection against crown debts in favour of a purchaser; for though, it seems, if he purchased without notice of the incumbrance, and could have gotten a term assigned for his benefit that had never been assigned for the crown debtor, it would have been a protection, it would have been otherwise where it had been actually assigned for such crown debtor, as the term would then have been subject to the crown debt: (*Rex* v. *Lamb*, 13 Pri. 649; *Rex* v. *Son*, *ib.* 655, cited; see also *Rex* v. *St. John*, 2 *ib.* 317; *Rex* v. *Hollier*, *ib.* 394.) Nothing, in fact, but a *quietus* entered up of record could have conferred a good title as against the crown.

Harshness of old law mitigated by subsequent enactments.

The harshness of the law has been mitigated by recent enactments (2 Geo 4, c. 121; 2 Vict. c. 11; 7 & 8 Vict. c. 90), under which a purchaser or mortgagee will not now be affected by crown debts, unless they are duly registered in pursuance of the statute 2 Vict. c. 11, s. 8. The same statute also directs that it shall be lawful for the commissioners of the Treasury, upon payment of such sums of money as they may think fit into the receipt of Her Majesty's Exchequer, by writing under their hands, to certify that the lands of any crown debtor shall be held by the purchaser or mortgagee thereof, exonerated from all claims by the crown: (sect. 10.)

Trust estates are liable to crown debts in like manner as legal estates: (*Rex* v. *Smith*, McClel. 417.) It seems, also, that estates *pur autre vie* are bound in the same manner as estates of inheritance (Comb. 291; Man. Exch. 541; 3 Prest. Abs. 309); but it appears doubtful whether copyhold or customary estates are bound at all; and leasehold estates, it is quite clear, are only bound from the teste of the writ of extent; so that a sale of property of that description, completed previously, will be valid even as against the crown: (*Drury* v. *Mann*, 1 Atk. 96; *Aldrich* v. *Cooper*, 8 Ves. 394.)

Trust estates liable to crown debts in like manner as legal estates.

This lien of the crown extends only to the lands of receivers or public officers being immediate accountants to the crown, and their sureties; and therefore a simple contract debt due to the crown will not bind the land of the debtor in the hands of a *bonâ fide* purchaser, who, without fraud or covin, buys from a simple contract debtor of the crown: (*Rex* v. *Smith*, Wight. 34.)

Lien of the crown extends only to the lands of immediate accountants.

Neither is the collector of assessed taxes of a parish, though liable to an immediate extent, a collector or receiver of money for the use of the crown within the statute of 13 Eliz. c. 4, s. 1; for he is not appointed by the crown; he is not a servant of the crown; he is appointed by other persons: neither does he give security to the crown; the security he gives is to other persons; he is therefore merely an ordinary simple contract debtor, and no further subject to the process of the crown than every one who has, *quocunque modo*, money of the crown in his hands: (*Casberd* v. *Ward*, 6 Pri. 411.)

Parish collector of assessed taxes is not a servant of the crown.

Judgments were formerly no more than a general lien upon the lands (13 Edw. 1, stat. 3; *Stileman* v. *Ashdown*, 2 Atk. 608; *Neate* v. *Duke of Marlborough*, 3 Myl. & Cra. 407), of which only one undivided moiety could have been taken under an *elegit* (*Fenny* v. *Durant*, 1

Judgments.

B. & A. 40), and did not affect copyhold estates: (*Cannon* v. *Pack*, 2 Eq. Ca. Abr. 226, pl. 6; Vin. Abr. tit. "Copyhold" (O. E.); *Drury* v. *Mann*, 1 Atk. 95; *Rex* v. *Lisle* (*Lord*), Park, 195; *Morris* v. *Jones*, 2 B. & C. 432.) But now, by the statute 1 & 2 Vict. c. 110, judgments are made to operate as an actual charge on the lands (sect. 13); the sheriff under a writ of *elegit* is empowered to deliver the whole, instead of a moiety; and the right of execution is extended so far as to take in and comprehend all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands of *copyhold or customary tenure*, as the person against whom execution is so sued, or any person in trust for him, shall have been seised or possessed of at the time of entering up of such judgment, or at any time afterwards, or over which the person shall, at the time of entering up such judgment, or at any time afterwards, have any disposing power which he might, without the assent of any other person, exercise for his own benefit, in like manner as the sheriff might then make and deliver execution of one moiety of the lands and tenements of any person against whom a writ of *elegit* was sued out.

Recent statutory enactments respecting judgments.

With respect to copyholds, however, there is a proviso, that such party suing out execution, and to whom any copyhold or customary lands should be delivered in execution, should be liable to render to the lord of the manor, or other person entitled, all such payments and services as the person against whom such execution shall have issued would have been bound to render in case such execution had not issued; and that the party so suing out such execution, and to whom any such copyhold or customary lands shall have been so delivered in execution, shall be entitled to hold the same until the amount of

Proviso with respect to copyholds.

such payments, and the value of such services, as well as the amount of the judgment, shall have been levied. And with a further proviso, that as against purchasers, mortgagees, and creditors, who shall become such before the time appointed for the commencement of this act, such writ of *elegit* would have no other or greater effect than a writ of *elegit* would have had in case the act had not passed: (sect. 11.)

Judgment although duly registered is not binding beyond five years from time of entry.

Nor will a judgment, although duly registered, be binding on purchasers beyond the term of five years from the date of the entry thereof, unless a like memorandum, or minute, as was required in the first instance, is again left with the senior master of the Court of Common Pleas within five years before the execution of the conveyance to the purchaser: (sect. 4.)

Judgment by tenant in tail, how far binding.

An estate tail could not formerly have been extended so as to affect the issue in tail, but only for the life of the tenant in tail in possession: (*Ashburnham* v. *St. John*, Cro. Jac. 85.) But a judgment by a tenant in tail will now be binding, not only on the issue in tail, but on the remainder-man also, where the tenant in tail could have barred the entail without the consent of the protector of the settlement: (sects. 11, 13.)

Estates in joint tenancy.

An estate in joint tenancy could not formerly have been taken in execution after the death of the joint tenant who acknowledged the judgment; but the law is now altered in this respect, and the judgment creditor is entitled to the same remedies against the share which has survived, as he would have had in the lifetime of the debtor: (Prid. Judg. 72.)

Statutes and recognizances.

Under statutes merchant, statutes staple, and recognizances to individuals, the lands and body, and leases and chattels, may be seized and taken in execution, and will become an actual charge upon the land. Formerly the enrolment or

docketing of recognizances, as required by the Statute of Frauds, 29 Car. 2, c. 3, s. 18, and other subsequent enactments (5 Anne, c. 18; 6 Anne, c. 35; 7 Anne, c. 20; 8 Geo. 1, c. 25; 8 Geo. 2, c. 6), to render them binding on a *bonâ fide* purchaser, were unnecessary in the case of recognizances on account of the crown, and of obligations in the nature and of the quality of statute staple. But now, by the statute 2 Vict. c. 11, no judgment, statute, or recognizance which shall thereafter be entered in the name of Her Majesty, shall affect purchasers, unless duly registered in pursuance of the directions of that act: (Cross on Lien, 127.)

Decrees. Decrees and orders of courts of equity, and all orders of the Lord Chancellor, or of the Court of Review in matters of bankruptcy, and all orders of the Lord Chancellor in matters of lunacy, whereby any sum or sums of money, or costs, shall be payable, will have the operation and effect of a judgment, and be binding on purchasers accordingly: (1 & 2 Vict. c. 110, ss. 18, 19.)

Lis pendens. A person who purchased whilst a suit was pending concerning the property, was supposed, in law, to have constructive notice of it, and was therefore bound by the consequences: (*Preston* v. *Tubbin*, 1 Vern. 392; *Worsley* v. *Scarborough* (*Earl of*), 3 Atk. 392.) There was one exception, however, to this rule, which was in the case of a third mortgagee, who, during the pendency of a suit, was permitted to gain priority over a second mortgagee, by obtaining a legal estate of a first mortgagee: (*Robinson* v. *Davison*, 1 Bro. C. C. 63; 3 Prest. Abs. 356.) But now, under the recent stat. 2 Vict. c. 11, purchasers will not be affected by any *lis pendens*, unless a memorandum of such suit is duly registered in pursuance of that act: (sect. 7.)

Debts. Debts when charged on real estate are incumbrances, and a purchaser should be satisfied that

they are discharged before he accepts the title. Where, however, lands are charged with the payment of debts generally, without any mention being made of the persons to whom such debts are due, the purchaser is, from necessity and general convenience, exempt from the obligation of seeing that they are discharged: (*Elliott* v. *Merryman*, Barn. 78; *Walker* v. *Smallwood*, Ambl. 676; *Walker* v. *Flamstead*, 2 Kenyon, pt. 2, p. 57; *Doran* v. *Wiltshire*, 3 Swanst. 1699; *Williamson* v. *Curtis*, 3 Bro. C. C. 96; *Bailey* v. *Ekins*, 7 Ves. 323; *Balfour* v. *Welland*, 16 *ib.* 151; *Shaw* v. *Borrer*, 1 Keen, 559; and see Prest. Abs. 360.) But it is otherwise if the debts and creditors are ascertained, or the debts are scheduled, or there has been a decree: in either of such cases it will become the duty of the purchaser to see that all the charges are duly satisfied, otherwise he must be content to take the lands burdened with them (*Culpepper* v. *Aston*, 2 Cha. Cas. 221; *Dunch* v. *Kent*, 1 Vern. 260; *Spalding* v. *Shalmer*, *ib.* 301; *Abbott* v. *Gibbs*, Eq. Ca. Abr. 358, pl. 2; *Elliott* v. *Merryman*, Barn. 78, 81; *Smith* v. *Guyon*, 1 Bro. C. C. 186); except, indeed, in those instances in which he is, from the nature of the trusts, or, as now generally happens, by an express provision in a deed, will, or act of Parliament, exempted from the obligation of applying his purchase money in the payment of the debts.

Where lands are charged with debts *generally*, purchaser is exempted from seeing to the application of the purchase money.

Aliter if debts are ascertained, or scheduled, or there has been a decree for their payment out of the lands.

Nor does the rule above laid down affect leasehold estates sold by executors or administrators in that character, they being entrusted by law with the power of sale for the purpose of raising money for payment of creditors; and a purchaser from such personal representatives is not bound to interfere in the application of the money beyond the discharge of those incumbrances which exist independently of the will, as mortgages, or the like, &c.: (3 Prest. Abs. 259, 260; 1 Inst. 290; *Ewer* v. *Corbet*, 2 P. Wms. 148;

Rule does not extend to leasehold estates.

Nugent v. *Gifford*, 1 Atk. 433; and see *Burting* v. *Stonnard*, 2 P.Wms. 150; *Andrew* v. *Wrigley*, 4 Bro. C. C. 137; *Dickenson* v. *Lockyer*, 4 Ves. 36.) But if the purchaser has express notice that there are no debts, or that the debts are all paid, he will not be permitted to purchase so as to defeat a specific devisee of the term: (*Crane* v. *Drake*, 2 Vern. 616; *Bonney* v. *Ridgard*, 2 Bro. C. C. 438, cited; *Whate* v. *Booth*, 4 T. R. 625, n.)

Purchaser how far exempted from seeing whether more real estate is sold than is necessary.

It will not be necessary, where real estate is devised for the payment of debts, that the purchaser should inquire whether more is sold than is sufficient for that purpose; for if this be done, it will not be allowed to turn to the prejudice of the purchaser, for he is not bound to enter into the account; and the trustees cannot sell just so much as is sufficient to pay the debts: (*Spalding* v. *Shalmer*, 1 Vern. 301, 304; see also *Humble* v. *Bill*, 1 Eq. Ca. Abr. 358, pl. 4; *Ex parte Turner*, 9 Mod. 418; *Hardwick* v. *Mynd*, 1 Anstr. 109; *Williamson* v. *Curtis*, 3 Bro. C. C. 96; *Barker* v. *Duke of Devon*, 3 Mer. 310.) But a decree to ascertain a specification of the debts will amount to the same thing as if they were actually scheduled, and in such case the purchaser will be bound to see that his purchase money is applied accordingly; he may, however, protect himself from this responsibility by an application to the court that the money may be paid into the bank, which, if done accordingly, will relieve him from all further responsibility, the court in that case taking upon itself to see that the money is properly applied: (*Lloyd* v. *Baldwin*, 1 Ves. sen. 173.)

Distinction between charges for debts and legacies, and charges for legacies only.

It must be remembered also that there is a distinction between charges for debts and legacies, and charges of legacies only on devised estates; for, in the former instance, as we have already seen, a purchaser is discharged from seeing his

money applied either in discharge of the debts or legacies; but when legacies only are charged upon real estate beneficially devised to a purchaser, who has notice of the will, the legacies will continue in equity to be a charge upon the estate, and the purchaser would be bound to see his purchase money applied in discharge of them: (*Drapers' Company* v. *Yardley*, 2 Vern. 662; *Smith* v. *Atterley*, 2 Freem. 136; *Tourville* v. *Naish*, 3 P. Wms. 307; *Tompkins* v. *Tompkins*, Pre. Cha. 399; *Wigg* v. *Wigg*, 1 Atk. 384; *Manning* v. *Herbert*, Ambl. 575; *Horn* v. *Horn*, 2 Sim. & Stu. 438; *Rogers* v. *Rogers*, 6 Sim. 364.)

Purchasers are discharged from all responsibility where trustees are authorized to give receipts.

But where a will creating a trust or power to sell authorizes the trustees to give receipts for the purchase money, the purchaser will be discharged from all responsibility respecting it, and will be in nowise bound to see that it is properly applied. And even where there is no power to give receipts annexed to the trusts for sale, still, if the time of sale is arrived, and some of the *cestui que trusts* are infants, and as such incapable of signing receipts, the receipts of the trustees will be a sufficient discharge: (*Sowarsby* v. *Lacy*, 4 Madd. 142.) And in *Lavender* v. *Stanton* (6 Madd. 46), Sir J. Leach observed, that the power of giving a discharge must necessarily be implied in a case of this kind, because of the children being incapable of joining in the receipts; otherwise the power of sale would be nugatory.

Whether a purchaser from the heir be bound by the specialty debts of the ancestor.

A purchaser, who buys of an heir or devisee, is not bound by the specialty debts of the ancestor or testator, unless he had notice of them, notwithstanding the heir himself would undoubtedly have been so; and although a distinction has been contended for between purchasing from a devisee and an heir, and it has been argued that it was only in the latter case a purchaser

would be so protected (*Matthews* v. *Jones*, 2 Anstr. 506), the distinction cannot be supported; for a *bonâ fide* purchaser for valuable consideration is as much entitled to protection when purchasing from the one, as from the other. It has also been determined, that, neither by the common law, nor under the statutes 3 & 4 Will. & M. c. 14, and 47 Geo. 3, c. 74, are the real assets descended or devised charged with the debts of the ancestor or testator. What those acts effect is, to render the heir or devisee personally liable to answer the value of the assets: (*Timbrel* v. *Timbrel*, 8 Sim. 253.) And the like rule holds with respect to estates rendered liable to simple contract, as well as to specialty debts, under the recent enactment, 3 & 4 Will. 4, c. 104. The payment of a legacy has been considered as good proof of the payment of debts; but this seems to be laying down the rule rather too broadly; for such payment amounts to presumptive evidence only, and is open to be rebutted, by showing that debts actually exist.

Legacies.

When legacies are charged on real estate, the purchaser should be satisfied, not only that they have been paid, but also that the lands have been exonerated from the charge by the legatees. Where, however, there is a general charge of debts and legacies, and the debts are to be paid, either in terms, or by construction, prior to the legacies, then, as the purchaser is not obliged to see his purchase money applied in payment of the debts, he is in like manner released from seeing it applied in payment of the legacies: (3 Prest. Abs. 361; *Walker* v. *Smallwood*, Ambl. 676; *Williamson* v. *Curtis*, 3 Bro. C. C. 96; *Walker* v. *Flamstead*, 2 Ken. pt. 2, p. 57; *Newell* v. *Ward*, Nels. 38; see also Ram. on Assets, 93.) Mr. Preston, however, suggests that there seems to be one exception, or at least a case calling for caution, and imposing on a

CHAP. IX. *Of various incumbrances*

purchaser the obligation, or, at any rate, the prudence, of seeing to the application of his purchase money. This, he continues to observe, occurs when the purchaser has full, clear, and distinct knowledge, by admission, or from circumstances, that all the debts have been paid, and that the legacies are the only remaining incumbrances: (3 Prest. Abs. 361.) So if there be a charge of certain specific sums, as 3,000*l.* for A. and 5,000*l.* for B.; and then the surplus, after payment of these legacies, is made a fund for the payment of debts, and, subject thereto, the residue is given to the devisee, it will be incumbent on the purchaser, notwithstanding the charge of debts, to have the sums of 3,000*l.* and 5,000*l.* paid to the legatees of those sums: (*Foulkes* v. *Gorwyn*, Dec. 1818, cited 3 Prest. Abs. 363; and see *Braithwaite* v. *Britain*, 1 Keen, 206.)

Portions.

The above remarks respecting legacies are equally applicable to portions charged on real estate. One main cause of difficulty which often occurs with respect to incumbrances of the latter kind, is the absence of any release or other satisfactory proof of their having been paid; or in consequence of releases having been taken from incompetent parties, as infants, or persons who were not duly qualified, as executors of an executor who had never proved the testator's will. Occurrences of this kind have often caused considerable difficulty, and it becomes necessary to consider whether circumstances afford a presumption of their discharge by the lapse of time without claim,—a presumption which is now greatly strengthened by the new Statute of Limitations, 3 & 4 Will. 4, c. 27, s. 28, which prohibits any proceedings for the recovery of any money charged upon land after twenty years, unless in the meantime some part of the money, either principal or interest, shall have been paid, or a written acknowledg-

Of various incumbrances

ment given: (*Paget* v. *Foley*, 2 Bing. N. C. 365.)

Liens.

We have already seen (see *ante*, vol. i. p. 98) that a vendor has in equity a lien on the property sold, for the whole or for any part of the unpaid purchase money, which will also be binding on a third party who purchases with a knowledge of these facts (2 Stor. on Eq. 456; Cross on Lien, 89; *Hearle* v. *Boteler*, Cary Cha. Rep. 25; *Walker* v. *Prestwick*, 2 Ves. sen. 622; *Gibbons* v. *Baddall*, 2 Eq. Ca. Abr. 632; *Elliott* v. *Edwards*, 3 Bos. & Pull. 181; *Macreth* v. *Symmonds*, 15 Ves. 329); but it will not affect a person who purchases *bonâ fide* without such notice; nor will a mere deduction of the title to the estate from the first vendor by recital, in anywise affect him, for there was nothing in that to show that the consideration money was not duly paid: (1 Bro. C. C. 302; Cross on Lien, 99.)

Outstanding legal estate.

The legal estate being outstanding, is, as I have before remarked, mere matter of conveyance, and will therefore form no objection to a title, even when vested in an infant or a lunatic, and this notwithstanding the latter has not been so found by inquisition.

Statutory enactments respecting conveyances by infants and lunatics.

Several acts of Parliament were from time to time passed for the purpose of obtaining these objects (7 Anne, c. 19; 5 Geo. 1 (1); 5 Geo. 2 (1); 7 Geo. 4, c. 43), all of which have been repealed by the statute 1 Will. 4, c. 60. By this last-mentioned statute, the Lord Chancellor, where trustees or mortgagees have become lunatic, is empowered to direct the committees of such persons to convey, in the place of such trustee or mortgagee, to such person and in such manner as the Lord Chancellor shall think proper: (sect. 3.) And the Lord Chancellor may, even before inquisition, appoint a person to convey: (sect. 5.) Infant trustees and mortgagees are

also empowered to convey by the direction of the Court of Chancery, which conveyances are declared to be as effectual as if the infant trustee or mortgagee had been at the time of making or executing the same of the age of twenty-one years: (sects. 6, 7.) And where trustees of real estates are out of the jurisdiction of, or not amenable to, the process of the Court of Chancery, or it shall be uncertain, where there are several trustees, which of them was the survivor, and it shall be uncertain whether the trustee last known to be seised is alive, or if he be known to be dead, it shall not be known who is his heir, or if such trustee seised as aforesaid, or the heir of any such trustee, shall neglect or refuse to convey such land for the space of twenty-eight days next after a proper deed for making such conveyance shall have been tendered to him for his execution, then it shall be lawful for the said Court of Chancery to direct any person they may appoint for that purpose in the place of the heir or trustee to convey such land to such person and in such manner as the said court shall think proper; and every such conveyance shall be as effectual as if the trustee seised as aforesaid, or his heir, had executed the same: (sect. 8.) The like powers are also conferred on the Court of Chancery where trustees of leasehold estates are out of the jurisdiction of the court, or it shall be uncertain whether the trustee last known to have been possessed be living; or if he or his executor shall refuse to convey within twenty days after a proper deed shall be tendered for execution: (sect. 9.) And husbands of female trustees, and whether they be under disability or not, are to be deemed trustees within the meaning of this act: (sect. 19.) It afterwards proceeds to enact, that the directions or orders of the court under the authority of this act are to be made upon petition: (sect. 11.) And any

committee, infant, or other person directed by virtue of this act to make or join in any conveyance, may be compelled by such order to execute the same, in like manner as trustees of full age and sound memory and understanding are compellible to convey: (sects. 13, 20.) This act is also made to extend to trustees, notwithstanding they may have some beneficial estate or interest in the same subject, or may have some duty as trustees to perform; but in every such case, and in every case of a mortgagee (not being a naked trustee), it shall be in the discretion of the Lord Chancellor, or of the Court, if under the circumstances it shall seem requisite, to direct a bill to be filed to establish the right of the party seeking the conveyance, and not to make the order for such conveyance unless the decree to be made in such cause, or until after such decree, shall have been made: (sect. 15.)

Representatives of vendors to be trustees.

The statute further enacts that where any land shall have been contracted to be sold, and the vendor shall die, either having received the whole or some part of the purchase money, or not having received any part thereof, and a specific performance of such contract, either wholly or as far as the same remains to be executed, or as far as the same by reason of the infancy, can be executed, shall have been decreed in the lifetime of the vendor, or after his decease, and where one person shall have purchased an estate in the name of another, but the nominal purchaser shall, on the face of the conveyance, appear to be the real purchaser, and there shall be no declaration of trust from him, and a decree of the said court, either before or after the death of such nominal purchaser, shall have declared such nominal purchaser to be a trustee for the real purchaser, then, and in every such case, the heir of such vendor, or such nominal purchaser, or his heir in whom the premises shall be vested, shall be and be

CHAP. IX. *Of various incumbrances*

deemed to be a trustee for the purchaser within the meaning of the act: (sect. 16.) It also further enacts, that tenants for life, or other limited interest of estates devised in settlement, and contracted to be sold, may be directed to convey after a decree for specific performance: (sect. 17.) The provisions of the act are also made to extend to constructive trusts, or trusts arising or resulting by implication of law; but in every such case, where the trustee claims a beneficial interest adversely to the party seeking a conveyance, no order shall be made for his executing the same until it has been declared by the Court of Chancery, in a suit regularly instituted, that such person is a trustee for the person seeking the conveyance. It is, however, provided, that this act shall not extend to cases upon partition, or cases arising out of the doctrine of election in equity, or to a vendor, except in any case thereinbefore expressly provided for: (sect. 18.)

Costs of petition, by whom defrayed.

The costs of petitions, orders, directions, and conveyances under this act may be ordered to be paid out of the property (sect. 25), and will fall on the party, or those claiming under him, through whose laches these costs have been incurred; but the purchaser must be at the other costs of the conveyance: (*Prytharch* v. *Havard*, 6 Sim. 9; *Midland Counties Railway Company* v. *Westcomb*, 11 Sim. 57; Mac. Law of Inf. 439.)

Act 1 Will. 4, c. 60, not applicable to mortgagees and their heirs.

The above-mentioned act did not apply to mortgagees or their heirs; but this evil was considered to be remedied by the statute 3 & 4 Will. 4, c. 23, which abolished escheats and forfeitures of trustees and mortgagees, except to the extent of any beneficial interest, and which was also considered to enlarge the previous statute 1 Will. 4, c. 60, so as to bring the heirs of mortgagees within its operation: (*Re Stanley*, 7 Sim. 170; *Ex parte Whitton*, 1 Keen, 278.) Still the point seems to have been a doubtful one (see Mac. on

Inf. 443), to obviate which the act 1 & 2 Vict. c. 69, was passed; by which it is provided that where any mortgagee shall have died *without having been in possession of the land, or in the receipt of the rents and profits thereof*, and the money due in respect of such mortgage shall have been or shall be paid to his executor or administrator, and the devisee or heir, or other real representative of any of the devisees or heirs, or real representatives of such mortgagee, shall be out of the jurisdiction, or not amenable to the process of the court, or it shall be uncertain, where there were several devisees or representatives, who were joint tenants, which of them was the survivor, or it shall be uncertain whether any such devisee or heir or representative be living or dead, or, if known to be dead, it shall not be known who was his heir, or where such mortgagee or any such heir or representative shall have died without an heir, or in case of neglect to convey, &c., the court may appoint a person to convey in like manner as by the act 1 Will. 4, c. 60, the court is empowered in the place of a trustee or the heir of a trustee: (sect. 1.) The 3rd section, however, provides that the acts 1 Will. 4, c. 60, and 4 & 5 Will. 4, c. 23, or either of them, should not be construed to extend to the case of any person dying seised of any land by way of mortgage, other than such as were therein-before expressly provided for: (sect. 3.)

Under stats. 1 Will. 4, c. 60, and 4 & 5 Will. 4, c. 23, infant is only empowered to convey such estates as he takes in the character of a trustee; but under a prior enactment

Under these two last-mentioned statutes, an infant is only empowered to convey such estates as he takes in the character of a trustee; but under a prior enactment (1 Will. 4, c. 47), he may, under certain circumstances, be compelled to convey his own interest. This occurs where there has been a decree for the sale of lands for the satisfaction of debts, and an immediate conveyance could not have been effected on account of an infant heir or devisee of such lands; in which

he *may* be compelled to convey his own interest.

case the court in which such decree is obtained is empowered to compel the infant to convey such estates so to be sold to the purchaser, in such manner as the said court shall direct; and every such conveyance shall be as valid as if the infant were of full age at the time of executing the same. It then proceeds to enact that where any lands, liable to the payment of debts, shall be devised in settlement, and by such devise shall be vested in any person for life or other limited interest, with any remainder over which may not be vested, or may be vested in some other person or persons from whom a conveyance or other assurance of the same cannot be obtained, or by way of executory devise, and a decree shall be made for the sale thereof for the payment of debts, it shall be lawful for the court that made such a decree to direct any such tenant for life, or other person having a limited interest, or the first executory devisee thereof, to convey the fee-simple, or other the whole interest so sold, to the purchaser, in such manner as the said court should think proper; and every such conveyance is thereby declared to be as effectual as if the person who should execute the same were seised in fee-simple: (sect. 12.)

Equitable tenant for life not within the statute.

There is, however, a very important omission in this act, which seems to have been lost sight of by the framers of it, and which can only be remedied by the Legislature. The act is altogether silent about persons who take equitable life estates, or other limited interests of that kind; whence it necessarily follows, that these are not such persons taking such a limited interest under the 12th section of that act as would authorize the court to direct them to convey to a purchaser, under a decree to sell for the payment of debts: (*Hemming* v. *Archer*, 5 L. T. 281.) And where in such case the devisee in trust *pur autre vie* disclaims, whereby the trust estate de-

scends to the heir-at-law, the court has no power under the 12th section of the act. And notwithstanding that infants taking by way of executory devise are, as we have already seen, empowered to convey by the 11th section, still where such infants are the children of a living person, they are disabled from so doing, for there may be more children born, and they have not therefore the whole interest in them: (*ib.*; see also *Gwyne* v. *Thomas*, 6 L. T. 127.)

SECTION II.

OF THE PROTECTION AGAINST PRIOR AND INTERMEDIATE ESTATES AND INCUMBRANCES.

1. *Protection at Law.*
2. *Protection in Equity.*
3. *Of Notice.*

1. *Protection at Law.*

Of the concurrent protection of courts of law and equity—Fraudulent conveyances.

THERE are certain instances in which courts of law, acting concurrently with courts of equity, will relieve a purchaser for valuable consideration against former conveyances by which his title is affected. Thus a voluntary settlement, however free from actual fraud, is, by the statute of 27 Eliz. c. 4, rendered fraudulent and void against a subsequent *bonâ fide* purchaser for valuable consideration at law as well as in equity, and this even where such purchaser buys with full notice of the settlement: (*Gooch's case*, 5 Co. 60; *Tonkins* v. *Ennis*, 1 Eq. Ca. Abr. 334, pl. 6; *Leach* v. *Dean*, 1 Cha. Rep. 78; *Evelyn* v. *Templer*, 2 Bro. C. C. 148; and see 1 Fonbl. Eq. 281.) The operation of this statute extends as well to copyholds as to freeholds: (*Doe* v. *Bottriell*, 5 B. & A. 131; *Currie* v. *Nind*, 1 Myl. & Cr. 580.) And even a conveyance for the payment of debts to which no creditor is a party, nor any particular debts specified, is considered as a fraudulent convey-

Protection.

ance within the above statute as against subsequent *bonâ fide* purchasers: (*Upton* v. *Bassett*, Cro. Eliz. 444; *Needham* v. *Beaumont*, 3 Rep. 83, n. *b*; *Doe* v. *Routlege*, Cow. 708; *Bullock* v. *Sadleir*, Ambl. 764; *Hill* v. *Exeter* (*Bishop of*), 2 Taunt. 69; *Doe* v. *James*, 16 East, 212; *Doe* v. *Rowe*, 4 Bing. N. C. 737; 1 Ves. & B. 184.) It seems doubtful, however, whether a purchaser who had actual notice of the trust would be relieved against a conveyance of this kind; at any rate, it is sufficiently questionable to render it imprudent for any purchaser to take a title so circumstanced: (*Langton* v. *Tracey*, 2 Cha. Rep. 16; *Stephenson* v. *Hayward*, Pre. Cha. 310.) And notwithstanding the protection the statute affords to a purchaser, it does not confer such a title on the vendor as will enable him to compel an unwilling purchaser to accept it (*Smith* v. *Garland*, 3 Mer. 123), though the latter has it in his power to compel the vendor to a specific performance (*Buckle* v. *Mitchell*, 18 Ves. 101; *Metcalfe* v. *Pulvertoft*, 1 Ves. & B. 180); the principle of the act being, to protect purchasers, and not to empower vendors to break through *bonâ fide* settlements, although arising from their own voluntary act, and without consideration.

Charitable uses.

A purchaser is also protected, at law as well as in equity, against charitable uses, by the stat. 43 Eliz. c. 3, which enacts, that no *bonâ fide* purchaser of lands, for valuable consideration, of lands, &c., that shall be given to any of the charitable uses mentioned in that act, without fraud or covin, *having no notice of the same charitable uses*, shall be impeached by the decrees of the commissioners therein mentioned. The protection afforded to purchasers by this latter statute is not, we see, quite so extensive as that conferred by the former one (27 Eliz. c. 4); for there he is entitled to protection even with notice, but in the latter instance he is not. And should

CHAP. IX. *Protection.*

he therefore purchase with such notice, it seems that no length of possession will make his title good: (*The Attorney-General* v. *Christ's Hospital*, 3 Myl. & Kee. 344.) Nor will it be sufficient to bring a case within the protection of the latter statute, that the purchaser has paid a valuable consideration for the property. To support his title, he must be enabled to show that he has given an adequate consideration; but it seems that any consideration which exceeds half the value of the land will be so considered: (*Baldwin* v. *Rochfort*, 2 Ves. 215, cited.) And even if the consideration does not come up to half the value of the land, although this would afford ground for impeaching the sale to the immediate purchaser, still if he were to sell to another upon good consideration *bonâ fide*, without notice, the title of the latter would be unimpeachable. But if he had notice, then it seems that all who claim in privity of estate under him, would be bound by it: (*East Grinstead case*, Duke, 64, 173.)

Defects in sales for the redemption of the land tax.

Inconveniences having sometimes arisen where lands had been sold for the redemption of the land tax under the statute 42 Geo. 3, c. 116, by reason of such sales having often been made by persons not having an absolute estate and interest in the property, the statute of 54 Geo. 3, c. 173, was passed, by which all such conveyances were confirmed from the respective periods at which such sales and conveyances were respectively made and executed (sect. 12); but, at the same time, persons injured or prejudiced by such sale, so confirmed, were to be entitled to relief in equity, and, by decree or order of such court, to receive compensation by a rent-charge, to be issuing out of the lands for such term or estate as the court should direct: (sect. 13.) Difficulties, however, again arose, on account of such conveyances not having been executed by the commissioners under the sign manual, as required by the terms of the

act, and also as to the mode of confirming titles under such imperfect conveyances; to remedy which, Commissioners for the Affairs of Taxes, or any two of them, are, by a subsequent statute (57 Geo. 3, c. 100), on their being satisfied that such deeds, &c., would have been authorized and available under the provisions of the said acts, if the commissioners under those acts had executed the same, enabled to sign and seal such deeds, &c., and to cause such indorsements to be made thereon as they may think necessary for showing their assent and confirmation thereto; and all such deeds, &c., so signed and sealed and indorsed, are thereby declared to be confirmed from the respective periods at which they were originally designed to take effect, and without any additional stamp duty being required in respect of such confirmation: (sect. 22.) The Commissioners for the Affairs of Taxes are also empowered to rescind any contract for the sale of any land for the redemption of the land tax, whenever such contract cannot be completed by reason of some defect in the title: (sect. 33.) It also further enacts, that all deeds required by the said acts to be enrolled shall be valid, although not enrolled within the period prescribed by the acts relating to the redemption of the land tax; and that it shall be lawful for any two or more of the Commissioners for the time being for the Redemption of the Land Tax, if they shall think fit, upon the production of any such deeds, to order the same to be enrolled or registered, which are thereby to become as valid as if the same had been enrolled within the periods prescribed by the said acts; and that all conveyances made subsequent to any deeds already enrolled or registered, or to be registered, under that act, and depending in point of title on such deeds, should be of the same effect as if such deeds had been enrolled or registered on the day of the date thereof; never-

CHAP. IX. *Protection.*

theless, without prejudice to the validity of any assurance to correct or supply any defects arising from the want of such enrolment or registry: (sect. 24.) It further enacts that all sales and conveyances of land for the purpose of redeeming the land tax, provided such conveyances shall appear to have been executed under the authority and with the consent and approbation of the respective commissioners, shall be thereby confirmed from the respective periods at which such sales and conveyances were respectively made and executed: (sect. 25.) And with a proviso for relief in equity for persons injured by such sales within five years, if not labouring under disability; and if so labouring, then within five years after the removal of the same: (sect. 26.)

Protection from acts of bankruptcy.

All dispositions of his property by a trader after committing an act of bankruptcy were, as we have already seen (vol. i. p. 195), void, under the statute 13 Eliz. c. 7. By the 21 Jac. 1, c. 15, s. 1, purchasers for valuable consideration were protected unless commission issued within five years after the act of bankruptcy. The 46 Geo. 3, c. 135, rendered all *bonâ fide* transactions with a bankrupt valid, if entered into more than two years before the date of his commission, notwithstanding a prior act of bankruptcy, unless the purchaser had notice of it. By a still more recent enactment (6 Geo. 4, c. 16), all *bonâ fide* conveyances by a bankrupt entered into more than two calendar months before the issuing of the commission, were declared valid, notwithstanding a prior act of bankruptcy, unless the purchaser had notice of it (sect. 81); and even with notice, unless commission sued out within twelve months after act of bankruptcy: (sect. 86.) And 2 Vict. c. 11, also enacted that all conveyances by any bankrupt, *bonâ fide* made and executed before the date and issuing of the fiat, should be valid, notwith-

Protection.

standing any prior act of bankruptcy by him committed; provided the purchaser to whom such bankrupt so conveyed, had not, at the time of such conveyance, notice of any prior act of bankruptcy by him committed: (sect. 12.) And it further enacts, that no purchase from any bankrupt, *bonâ fide* and for valuable consideration, where the purchaser had such notice at the time of such purchase of an act of bankruptcy by such bankrupt committed, should be impeached by reason thereof, unless the commission against such bankrupt shall have been sued out within twelve calendar months after such act of bankruptcy: (sect. 13.) And the 12 & 13 Vict. c. 106, which repeals the whole of the statute of 6 Geo. 4, c. 16, as also so much of the statute 2 Vict. c. 11, as relates to the protection of purchasers against secret acts of bankruptcy (Leech l), enacts that "all conveyances by any bankrupt *bonâ fide* made and executed before the date of the fiat, or the filing of such petition, will be valid, provided the party to whom such conveyance is made, had not, at the time of such conveyance, notice of any prior act of bankruptcy:" (sect. 133.) And "no purchase from any bankrupt *bonâ fide* and for valuable consideration, where the purchaser had notice at the time of such purchase, of an act of bankruptcy, shall be impeached by reason thereof, unless a fiat, or petition for adjudication of bankruptcy, shall have been sued out or filed within twelve months after such act of bankruptcy:" (sect. 134.)

Judgments.

By statute 1 & 2 Vict. c. 110, no judgment or decree, or any order in bankruptcy or lunacy, shall affect purchasers, unless registered in pursuance of the terms of that act: (sect. 19.) And by the stat. 2 Vict. c. 11, judgments are, as we have already seen, to be void after five years, unless a like memorandum, as was required in the first instance, is again left with the

CHAP. IX. *Protection.*

senior master of the Common Pleas, and so, *toties quoties*, at the expiration of every succeeding five years: (sect. 4.)

Lis pendens.

The last-mentioned statute also directs that no *lis pendens* shall bind a purchaser without express notice thereof, unless such suit is duly registered, as thereby is directed: (sect. 7.)

Crown debts.

It also enacts, that no judgment, statute, or recognizance, which should thereafter be obtained or entered into upon account of the crown, or inquisition, by which any debt shall be found due to Her Majesty, her heirs or successors, should affect purchasers, unless duly registered in the manner thereby prescribed: (sect. 8.)

Protection from unregistered deeds.

In certain parts of the kingdom all deeds and wills are required, by act of Parliament, to be registered (2 & 3 Anne, c. 4; 5 Anne, c. 18; 6 Anne, c. 35; 7 Anne, c. 20; 8 Geo. 2, c. 6); and where this occurs, all deeds and wills, unless registered there accordingly, are declared to be fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration. But as, on the one hand, a subsequent purchaser is protected against an unregistered document, so on the other, where the title depends upon one that is already registered, he must be careful to ascertain, not only that this be done, but also that the registry be made in pursuance of the terms of the particular act of Parliament prescribing it. And notwithstanding an appointment, when made, is considered to relate to, and to operate in the same manner as if contained in the deed creating the power, still, an unregistered appointment will be ineffectual against a subsequently registered deed, it being considered as falling within the mischiefs the Registry Acts were intended to guard against: (*Scrafton* v. *Quincey*, 2 Ves. sen. 413.) But copyhold lands need not be registered, nor

leases at rack-rent; nor leases not exceeding twenty-one years, where the possession goes along with them.

Defective fines and recoveries.

Many titles having proved defective in consequence of the negligence of persons employed in suffering recoveries, the statute of the 14 Geo. 2, c. 20, was passed, by which it was enacted, that a purchaser, having been twenty years in possession, might, at the end of that time, produce in evidence the deed making the tenant to the *præcipe*, and declaring the uses of the recovery, which was to be deemed good evidence that the recovery was duly suffered, in case no record of the recovery could be found, or it was entered irregularly on the record. And it was also provided, that all recoveries should be deemed good after twenty years, where it appeared that there was a tenant to the writ, and the persons joining in the same had a sufficient estate and power to suffer the recovery, notwithstanding the deed making the tenant to the *præcipe* might be lost: (sect. 5.) Other inconveniences, however, also arose upon titles depending on fines and recoveries, in consequence of their having been levied or suffered in wrong courts, as in the superior courts, for example, where the lands were of ancient demesne. These defects are now remedied by the recent Fine and Recovery Substitution Act, 3 & 4 Will. 4, c. 74, which removes the existing inconveniences resulting to the parties from their mistakes in having suffered fines or recoveries under wrong jurisdictions: (sects. 4, 5, 6.) It also does away with the necessity of the amendment of fines or recoveries for errors in names or in misdescription of parcels (sects. 7 and 8; and see *Lockington's case*, 1 Bing. N. C. 355); whilst it saves the jurisdiction of the courts in other cases: (sect. 9.) It also renders recoveries valid where a deed of bargain

CHAP. XI. *Protection.*

and sale has not been duly enrolled, or the legal estate has been left outstanding: (sects. 10, 11.) It also provides that a voidable estate by a tenant in tail in favour of a purchaser for valuable consideration shall be confirmed *by a subsequent disposition by the tenant in tail* under that act, but not as against a purchaser without notice: (sect. 38.) It was, indeed, enacted by a previous statute (3 & 4 Will. 4, c. 27, s. 23), that where there shall have been possession under an assurance by a tenant in tail which shall not bar the remainders, they shall be barred at the end of twenty years after the time when the assurance, if then executed, would have barred them. A doubt has, however, arisen as to whether this clause of the act applies to fines and recoveries. Mr. Browell, in his edition of the Real Property Statutes (p. 41), observes, that one learned gentleman considers this act has no such application, because a fine would not at that period have barred the remainders, nor could a recovery have any new operation; for that assurance could not now be made at all, and the terms of the section require that such assurance, *if then executed*, would have operated to bar such estates. The words also, "without the consent," he adds, apply only to the protectorship introduced by the new act. And, further, the Fines and Recoveries Act makes good defective fines and recoveries where such was the intention, and gives confirmation in certain cases in express words to voidable estates *already created*, or thereafter to be created, by a tenant in tail. Mr. Hayes, on the contrary, states that the provision does apply to the old system of common recoveries, and on that hypothesis suggests some cases in which the construction of the clause would be open to doubt: (Hayes's Conv. 234.) And Mr. Browell himself ex-

presses his opinion "that the language of the enactment is certainly not, in strictness, applicable to recoveries, but that it may be doubted whether there is sufficient to exclude these assurances from its operation. The argument derived from the words of the section requiring that the assurance must have operated to bar the remainders, if executed at the time when the power to do so first accrued, seems only to show that if that event happened after recoveries were abolished, the provision cannot apply to them. Even to that extent the exclusion of recoveries seems doubted." Amidst such uncertainty and diversity of opinions it is almost needless to say that no title upon which a question of this kind arises can be considered as marketable. But such defect, except as against a subsequent purchaser without notice, might be cured by a subsequent disposition by the person who, but for such conveyance, would have been tenant in tail, if there is no protector of the settlement; but if there be such protector, who shall not consent to the disposition, and the tenant in tail shall not, without such consent, be capable of confirming the voidable estate to its full extent, then, and in such case, such disposition shall have the effect of confirming such voidable estate, so far as such tenant in tail would then be capable of confirming the same without such consent: (sect. 38.) And by the 47th section of the same statute, any commissioner acting in the execution of a fiat in bankruptcy, in the case of a tenant in tail entitled to a base fee becoming bankrupt, is enabled to dispose of such lands to a purchaser for valuable consideration, provided, at the time of such disposition, there be no protector of the settlement by which the estate tail converted into a base fee was created; and by such disposition the base fee shall be enlarged

CHAP. IX. *Protection.*

into as large an estate as the same could, at the time of such disposition, have been enlarged into by the person so entitled, if he had not become bankrupt.

2. *Protection in Equity.*

Defective assurances.

A purchaser for valuable consideration without notice has always been considered as entitled to the protection of a court of equity, which will supply any defects of circumstances in conveyances; such as livery of seisin in the passing of a freehold (Fran. Max. 55; *Brockenham* v. *Brockenham*, 1 Cha. Cas. 240; *Thompson* v. *Atfield*, 2 Cha. Rep. 112; *Jackson* v. *Jackson*, Sel. Cas. Cha. 81), or, as we have already seen (*ante*, p. 151, *et seq.*), of a surrender of copyholds. Equity will also relieve against a defective execution of a power, but not where the power is never executed at all; the rule being that the non-execution of a power cannot be supplied, though a defective execution may: (*Tollett* v. *Tollett*, 2 P. Wms. 490; *Holmes* v. *Coghill*, 7 Ves. 499; 12 *ib.* 206; *Hixon* v. *Oliver*, 13 Ves. 114.) And notwithstanding equity will supply defects in a conveyance, even as against a subsequent purchaser, *if he buys with notice*, still this aid does not extend to the supplying of any circumstance for the want of which the Legislature has declared the instrument to be void (*Hibbert* v. *Rolleston*, 3 Bro. C. C. 751; *Williams* v. *Bolton* (*Duke of*), 2 Ves. 128; *Ex parte Bulteal*, 1 Cox, 243); unless, perhaps, where, by accident, or fraud, the party be prevented from completing the instrument, as prescribed by law: (1 Fonbl. Eq. 38, n. *t.*) Neither does this remedial power of courts of equity extend to the case of a defective fine, as against the issue; nor of a defective recovery, as against the remainder man: (*ibid.*)

Vendor, how

Where a vendor has a good title, but executes

far bound to perfect an imperfect assurance.

an imperfect conveyance to a purchaser, not only will he himself be found to perfect the assurance, but this equity will attach upon and be binding on his heir also: (*Taylor* v. *Wheeler*, 2 Vern. 564; *Jennings* v. *Moore*, *ib.* 609; *Martin* v. *Seamore*, 1 Cas. in Chan. 170.) Yet, no such equity attaches on the heir, where a vendor, *having a defective title*, conveys to a purchaser, and afterwards a good title devolves upon him. Still, although the vendor himself would have been bound to make good the conveyance, it is nothing more than a personal equity attaching upon the conscience of the party, and not descending with the land: (*Forse* v. *Faulkner*, 1 Anstr. 11; *Carleton* v. *Leighton*, 3 Mer. 667.) But, although the heir cannot be compelled to confirm the imperfect assurance, still, if he does so, he will be bound by it, even if unaware of the extent of his interest in the property: (*Braybroke* (*Lord*) v. *Inskip*, 8 Ves. 417, 431.) For where a purchaser has given a full value for an estate, the mistake or ignorance of some of the parties to the conveyance of their claims upon the property, will not be permitted to prejudice a fair and *bonâ fide* purchaser: (*Malden* v. *Menhill*, 2 Atk. 8; see also *Can* v. *Can*, 1 P. Wms. 727; *Stevens* v. *Bateman* (*Lord*), 1 Bro. C. C. 22; *Malcomb* v. *Charlesworth*, 1 Keen, 63; *Sturge* v. *Storr*, 2 Myl. & Keen, 195.) And if a man who has a title stands by and encourages the purchase, he will be bound by it: (*Hobbs* v. *Norton*, 1 Vern. 136; *Hunsden* v. *Cheyney*, 2 *ib.* 150; *Row* v. *Pole*, *ib.* 239; *Draper* v. *Borlace*, *ib.* 370; *Ibbetson* v. *Rhodes*, *ib.* 554; *Arnott* v. *Bigle*, 1 Ves. 95; *Berrisford* v. *Milward*, 2 Atk. 49; *East-India Company* v. *Vincent*, *ib.* 3; *Jackson* v. *Cator*, 5 Ves. 688; *Burrowes* v. *Lock*, 10 Ves. 470.) Nor will either infancy, or coverture be admitted as an excuse in a transaction of this kind: (*Watts* v.

CHAP. IX. *Protection.*

Cresswell, and *Clare* v. *Earl of Bedford*, cited in *Savage* v. *Foster*, 9 Mod. 33; *Evroy* v. *Nicholls*, 2 Eq. Ca. Abr. 489; *Becket* v. *Cordley*, 1 Bro. C. C. 353.) "And this," the learned author of the Treatise on Equity observes (lib. 1, c. 3, s. 4), "seems a just punishment for concealing his right, by which an innocent man is drawn to lay out his money:" (and see *Syles* v. *Cooper*, 3 Atk. 692; *Anon.* Bunb. 35; *Henning* v. *Ferrers*, Gilb. Rep. 83; *Fox* v. *Macreth*, 2 Bro. C. C. 420.)

Dormant incumbrances.

Equity will also relieve a *bonâ fide* purchaser against dormant incumbrances, such as ancient statutes, of which there is no positive proof of their having been cancelled (*Burgh* v. *Wolf*, Toth. 226; *Smith* v. *Rosewell*, *ib.* 247); as also against old mortgages or other incumbrances, which have not been acted upon for a long time, or any demand made in respect of them: (*Abdy* v. *Loveday*, Finch, 250; *Gibson* v. *Fletcher*, 1 Cha. Rep. 32; *Hales* v. *Hales*, 2 *ib.* 56; *Whiting* v. *White*, 2 Cox, 290.) And as, on the one hand, equity will raise this presumption in favour of a mortgagor who has been long in possession, so on the other hand, where a mortgagee has been in possession for any great length of time, as twenty years or upwards, without paying any interest,—or any other circumstances appearing from which it can be inferred that the mortgage is still subsisting, and the mortgagor cannot set up a sufficient legal disability in excuse for his neglect, the equity of redemption will be wholly barred: (*St. John* v. *Turner*, 2 Vern. 418; *Trash* v. *White*, 3 Bro. C. C. 289; *Blewett* v. *Thomas*, 2 Ves. 669; 1 Fonbl. Eq. 333, n. *s*.)

Legal estate, how far a protection.

A purchaser for valuable consideration, without notice, was allowed in equity to avail himself of the protection of any outstanding legal estate in support of his title; so that where a purchaser

bought up an old statute or mortgage, though nothing was due upon it, he was admitted to defend himself by it: (*Higden* v. *Calamy*, 21 Car. 2; and *Wymousel and Howland*, cited 2 Vern. 158; see also *Stanton* v. *Sadleir*, *ib.* 30; *Hitchcock* v. *Sedgwick*, *ib.* 156; *Golborn* v. *Alcock*, 2 Sim. 559.) So, where a purchaser, without notice, procured the assignment of an outstanding term to a trustee, he was allowed to avail himself of its protection, as a security against all estates, charges, and incumbrances (except Crown debts by specialty) created immediately between the time of granting the term and the period of the purchase: (1 Mad. Pract. 507; *Finch* v. *Northworthy*, Finch, 102; *Willoughby* v. *Willoughby*, 1 T. R. 763; *Churchill* v. *Grove*, Nels. C. R. 91; 1 Saund. Uses, 275.) It would also have afforded a protection against an act of bankruptcy: (*Collet* v. *De Gols*, For. 65.) The execution of a power of appointment would also have overreached judgments subsequent to the deed creating the power, and would have been binding on the estate, even at law (*Doe* v. *Jones*, 10 B. & C. 459); and in equity would have protected a purchaser, even with notice: (*Tunstall* v. *Trappes*, 3 Sim. 286; *Eaton* v. *Sanxter*, 6 Sim. 517; *Skeeles* v. *Shearley*, 8 *ib.* 153; 3 Myl. & Cr. 112.) But, in general, if a person purchased an equitable estate, with notice of existing judgments upon the property, no acquisition of the legal estate by the purchaser could have protected him from such incumbrances: (*Tunstall* v. *Trappes*, 3 Sim. 386.) A mortgagee, therefore, who had notice of judgments, purchasing the equity of redemption, would be bound by such judgments, although they were not entered up until after the mortgage.

Alterations effected by recent enactments.

The recent statutes of the 1 & 2 Vict. c. 10, and of 2 Vict. c. 11, have in some degree narrowed this equitable protection of purchasers; for

CHAP. IX. *Protection.*

though the execution of a power will still overreach judgments in favour of a purchaser for valuable consideration without notice (2 Vict. c. 11, s. 2), it will not, as formerly, afford any protection to a purchaser who has notice of them; and, notwithstanding a purchaser may still protect himself by obtaining the conveyance of a prior legal estate, as he also may where, before the 31st of December, 1845, he has obtained an assignment of an outstanding term to a trustee for his benefit (sect. 5), still, it seems that a legal estate will afford him no protection where, instead of being left outstanding, it is vested in a trustee in trust for the vendor, or an attendant term *has been actually assigned* to a trustee in trust for him; for now, under the recent enactments, judgments, instead of being a mere general security as formerly, are made an actual charge upon the lands, which would be so chargeable in the hands of the vendor, notwithstanding the legal estate was vested in some one else in trust for him; and it seems that a judgment-creditor might follow such lands, even in the hands of a *bonâ fide* purchaser.

Requisites to equitable protection.

In order also that a purchaser may avail himself of the benefit of an *outstanding* term, he must have paid a valuable consideration. His purchase must have been fair, he must have had no notice, either express or implied, and must have the best right to call for the legal estate of the term: (*Willoughby* v. *Willoughby*, 1 T. R. 763; see also *Saunders* v. *Dehew*, 2 Vern. 271; *Robinson* v. *Davidson*, 1 Bro. C. C. 63; *Jerrard* v. *Saunders*, 4 *ib.* 457; *Evans* v. *Bicknell*, 6 Ves. 184.)

Purchaser even with notice may protect himself against dower.

The rule indeed with respect to notice is now applicable to all cases of purchasers intending to avail themselves of the protection of prior legal estates, with the single exception of dower, which it has long been determined a purchaser

may protect himself against by obtaining the assignment of an attendant term, notwithstanding he purchases with express notice of the marriage: (*Radnor* (*Lady*) v. *Rotherham*, Pre. Cha. 65; S. C. 1 Vern. 179, by the name of *Bodmin* v. *Vandebendy*; S. C. Show. P. C. 69; *Brown* v. *Gibbs*, 1 Vern. 97; *Wray* v. *Williams*, Pre. Cha. 151; S. C. 2 Vern. 378; 1 Eq. Ca. Abr. 219, pl. 4, but best reported 1 P. Wms. 137; *Dudley and Ward* v. *Dudley*, Pre. Cha. 241; Cas. temp. Talb. 140; *Baker* v. *Sutton*, 2 P. Wms. 700, 707; *Swannock* v. *Lydford*, Ambl. 6; S. C. by name of *Hill* v. *Adams*, 2 Atk. 208; *Wynn* v. *Williams*, 5 Ves. 130; *D'Arcy* v. *Blake*, 2 Sch. & Lef. 387.) Still, to obtain this equitable protection as against a widow's title to dower, the term must be actually assigned to a trustee in trust for the purchaser; for, if it be left outstanding, he will not be permitted to avail himself of it: (*Maundrell* v. *Maundrell*, 7 Ves. 567.) Before dismissing this subject, it may not be improper to make a few remarks upon the operation of the recent enactment, 8 & 9 Vict., with respect to outstanding terms. By this act, all satisfied terms are to cease on the 31st of December, 1845; but it still continues the same protection as before against incumbrances, in those cases where it has been made attendant by express declaration: (sects. 1, 2.) Still, as this protection is restricted to terms attendant by express declaration, and as no such declaration can be made after the 31st of December, 1845, all persons who had not obtained an assignment before that time are wholly debarred of all benefit of such satisfied terms. A learned writer, when treating on this subject, also observes (see Browell's Real Property Statutes, 281, n. *b*), "Before it can be assumed that a term is brought within the operation of the act, there must be a full dis-

Attendant term will afford no protection unless actually assigned.

Recent enactments respecting attendant terms.

CHAP. IX. *Protection.*

closure of the trusts or purposes for which it was created, or to whom it may have become subsequently liable, and the clearest evidence that none of them are subsisting and capable of taking effect. It is obvious that difficulties will frequently arise in satisfying a purchaser upon these points; and whenever he omits to obtain an assignment, he will be liable to have the term used against him in ejectment, and may have the *onus* cast upon himself of proving that the term is satisfied. Even possession of the deeds relating to the term will not prevail against an actual assignment to a future purchaser without notice; and such purchaser will perhaps be enabled to give a continued and permanent existence to the term, merely by having it assigned upon express trust, to protect him from the afterwards-discovered *mesne* incumbrance. The operation of the statute is similar to that of the old proviso for *cesser*, which," as he truly remarks, "is very rarely relied on in practice, though it might be with less hazard, inasmuch as the proviso specifies the events on which the term is to cease, and there is seldom a difficulty in proving that such events have happened; but much more than this is requisite to satisfy a purchaser that the term has ceased by force of the statute."

How a purchase should be pleaded.

A purchaser for valuable consideration, in order to avail himself of this equitable protection, must do so by plea and not by answer; for if he does the latter, he will be bound to answer fully (*Richardson* v. *Mitchell*, Sel. Cas. Cha. 51; *Clanrichard* v. *Burk*, Vin. Abr. tit. "Chancery" (W. A.); 2 Atk. 155; *Blacket* v. *Langlands*, 1 Anstr. 14; *Hughes* v. *Garth*, 2 Eden, 168; S. C. Ambl. 421; *Ovey* v. *Leighton*, 2 Sim. & Stu. 234; *Portarlington* (*Lord*) v. *Soulby*, 7 Sim. 28; *Trevanion* v. *Mosse*, 1 Vern. 246); the plea, in fact, being the cause assigned

for not putting in the answer. The plea should state the purchase according to the facts (*Egerton* v. *Egerton*, 3 P. Wms. 281; *Aston* v. *Aston*, 3 Atk. 302; *Walwyn* v. *Lee*, 9 Ves. 32; *Attorney-General* v. *Backhouse*, 17 Ves. 290; see also 2 Mad. Pract. 322; Rede's Tr. pl. 215), and must set forth an actual conveyance, for a mere agreement to purchase is insufficient (*Heap* v. *Egerton*, 3 P. Wms. 280); and also aver that the purchase money was actually paid (*Moor* v. *Mayhow*, 1 Cha. Cas. 34; *Harrison* v. *Southcote*, 1 Atk. 538; *Story* v. *Windsor* (*Lord*), 2 *ib.* 630; *Hardingham* v. *Nicholls*, 3 *ib.* 304; *Hardwood* v. *Tooke*, 2 Mad. Pract. 323), this being absolutely requisite to support it; for if merely secured to be paid, it will be insufficient: (*ib.*) But the plea will not be bad merely because the sum paid was inadequate to the value of the purchased property: (*Bassett* v. *Nosworthy*, Finch, 102; *Mildmay* v. *Mildmay*, Ambl. 767, cited; *Bullock* v. *Sadleir*, *ib.*) The plea must also deny notice of the plaintiff's title previously to the completion of the purchase, which notice must be denied in positive terms, and not evasively or equivocally: (*Moor* v. *Mayhow*, 1 Cha. Cas. 34; *Cason* v. *Round*, 1 Pre. Cha. 226, n. *a*; *Ashton* v. *Curzon*, and *Weston* v. *Berkeley*, 3 P. Wms. 244; *Attorney-General* v. *Gower*, 2 Eq. Ca. Abr. 685, pl. 11; *Bodmin* (*Lady*) v. *Vandebendy*, 1 Vern. 179; *Storey* v. *Windsor* (*Lord*), 2 Atk. 630; *Fitzgerald* v. *Burk*, *ib.* 397; *Hughes* v. *Garner*, 2 You. & Coll. 328.) At the same time, it will be sufficient to deny notice generally (*Ovey* v. *Leighton*, 2 Sim. & Stu. 234), unless certain facts are stated in the bill as evidence of such notice (*Bennington* v. *Beechy*, 2 Sim. & Stu. 282; *Thring* v. *Edgar*, *ib.* 274); in which case the facts so stated must be denied as specially as they are charged: (*Mader* v. *Birt*, Gilb. Eq.

CHAP. IX. *Protection.*

Rep. 185; *Radford* v. *Wilson*, 3 Atk. 815; *Foley* v. *Hill*, 2 Myl. & Cr. 478.)

3. *Of Notice.*

What will be sufficient notice to deprive a person of equitable protection.

Our next consideration will be, what will be sufficient notice to deprive a person of all claim to equitable protection?—a question involved in much nicety, depending sometimes on matters of fact, sometimes on matter of law. It may be either positive, as where the knowledge of the fact is brought directly home to the party (1 Stor. Eq. 320); or constructive, as where, from the knowledge of some certain fact or circumstance, he must be presumed also to have a knowledge of other facts or circumstances connected therewith: (*Plumb* v. *Fluitt*, 2 Anstr. 438; *Mertins* v. *Jolliffe*, Ambl. 311; *Marr* v. *Bennett*, 2 Cha. Cas. 246.) Thus, knowledge of a lease has been held to be constructive notice of its contents: (*Hall* v. *Smith*, 14 Ves. 426; *Taylor* v. *Stibbert*, 2 Ves. 440; *Daniels* v. *Davison*, 16 Ves. 249; *Allen* v. *Anthony*, 1 Mer. 262; *Martinez* v. *Cooper*, 3 Russ. 198; *Cook* v. *Martyn*, 2 Atk. 2; *Barnard* v. *Plumfret*, 5 My. C. & Cra. 63.) So notice of a deed, which recites another deed, will be constructive evidence of such latter deed; nor will a party so presumed to be possessed of knowledge of this kind be permitted to disprove it by evidence. And this rule has been extended so far as to establish that where a purchaser cannot make out a title but by a deed which leads him to another fact, he will be presumed cognizant of that fact (2 Fonbl. Eq. 151); and it has also been holden that, whatever is sufficient to put a party upon inquiry, is sufficient notice in equity: (*ibid* n. *m*; *Smith* v. *Low*, 1 Atk. 1; *Mertins* v. *Jolliffe*, Ambl. 313; *Taylor* v. *Stibbert*, 2 Ves. 437; *Daniels* v. *Davison*, 16 *ib.* 250; *Newman* v. *Kent*, 1 Mer. 240.) But a purchaser is not

Doctrine o notice.

bound to take notice of an equity arising out of mere construction of words, which are uncertain (*Cordwell* v. *Mackrill*, 2 Eden. 347); nor of any matters beyond those which affect his present purchase: (*Mertins* v. *Jolliffe*, Ambl. 811.) Hence, if a man purchase an estate under a deed which happens to relate also to other lands not comprised in that purchase, and afterwards he purchases the other lands to which an apparent title is made, independent of that deed, the former notice of the deed will not itself affect him in the second transaction; for he is not bound to carry in his recollection those parts of a deed which had no relation to the particular purchase he was then about to make, nor to take notice of more of the deed than affected his then purchase: (*Hamilton* v. *Royal*, 2 Sch. & Lef. 327; 1 Stor. Eq. 321, n. 1.) Neither are vague and indefinite rumours sufficient to put a party upon inquiry. Still, as a celebrated modern writer on equitable jurisprudence observes (1 Stor. Eq. 322), there will be found almost infinite grades of presumption between such rumour and suspicion, and that certainty as to facts which no mind could hesitate to pronounce enough to call for further inquiry, and to put the party upon his diligence. No general rule, therefore, he proceeds to state, can be laid down to govern such cases. Each must depend upon its own circumstances: (*Hine* v. *Dod*, 2 Atk. 275; *Eyre* v. *Dolphin*, 2 Ball & Beat. 301; 2 Fonbl. Eq. 303, n. *b*.) There is no case which goes the length of saying, that the failure of the utmost circumspection shall have the same effect of postponing a party as if he were guilty of fraud or wilful neglect, or had positive notice (*Plumb* v. *Fluitt*, 2 Anstr. 433, 440); and though a mistake of law upon the construction of a deed or contract will not alone discharge a purchaser from the legal

Doctrine of notice.

CHAP. IX. *Protection.*

effects of notice of such deed or contract, yet there may be a case of such doubtful equity under the circumstances, that it ought not to be enforced against a purchaser: (*Bovey* v. *Smith*, 1 Vern. 144, 149; *Walker* v. *Smallwood*, Ambl. 676; *Cordwill* v. *Mackrill*, 2 Eden, 344, 348; *Parker* v. *Brooke*, 9 Ves. 583, 588; 1 Stor. Eq. 322.) Nor will the mere fact of possession of the title deeds, unless accompanied with some other circumstances, be sufficient to affect a purchaser with notice; but if, in addition to the knowledge that no title deeds can be produced, he has such information as would induce any one possessing ordinary caution to make further inquiries, which he fails to do, he will be construed to have notice of those facts, of which, if he had used ordinary diligence, he might have informed himself: (*Whitbread* v. *Young*, 1 You. & Coll. 303.)

What acts or circumstances will amount to notice.

A public act of Parliament is said to be public notice to the whole world and binding upon all mankind; but a private act only binds the parties to whom it relates. Upon the same principle that the public acts of Parliament must be supposed to be universally known it was formerly presumed that every man must be attentive to what passes in the courts of justice of the state or sovereignty where he resides; and that therefore any one purchasing property which was actually in litigation, *pendente lite*, was considered to have notice of the suit, and to be bound by the judgment or decree therein: (3 Prest. Abs. 355.) But now *lis pendens* will not be binding on a purchaser who has no express notice thereof, unless, as we have already seen, *ante*, p. 101, it is duly registered in pursuance of the stat. 2 & 3 Vict. c. 11, s. 7.

Decrees.

Previously to the statute 1 & 2 Vict. c. 110, a decree of a court of equity was only binding on the parties and their privies in representation, or

estate, and was not therefore held to be *per se* a constructive notice to any other persons. But if a person who is neither party, nor privy, actually had such notice, he was, and still will be, bound by it: (*Harvey* v. *Montague*, 1 Vern. 57, 122; 1 Stor. Eq. 327; 2 Fonbl. Eq. 153, n.) Now, under the statute 1 & 2 Vict. c. 110, decrees and orders of courts of equity are to have the effect of judgments (sect. 18); but with respect to the latter, the act of docketing was not of itself considered as notice to a purchaser, neither is a registration of a judgment or decree under the more recent enactments; but if it can be shown that a party actually had such notice, he would be bound accordingly, and the act of searching the register will be sufficient to affix him with such notice, unless it can be shown that the search was restricted to a particular period, in which the judgment in question was not entered: (*Hodgson* v. *Dean*, 2 Sim. & Stu. 221.) Neither is an act of bankruptcy, nor a commission or fiat in bankruptcy, notice of either of those facts to a purchaser (*Wilker* v. *Bodington*, 2 Vern. 599; *Collet* v. *De Gols*, For. 65; *Ex parte Knott*, 11 Ves. 609; *Sowerby* v. *Brooks*, 4 B. & A. 523); nor does the act 6 Geo. 4, c. 16, s. 83, which makes the issuing of a commission notice of an act of bankruptcy, in certain cases, affect a purchaser. Neither will a *boná fide* purchaser, without notice, be affected by a secret act of bankruptcy, before his purchase, although it be followed by a fiat after his purchase: (*Pearce* v. *Newlyn*, 8 Mad. 186.) The registering of a conveyance, or other document, even in a register county, will not be deemed constructive notice to subsequent purchasers; but to be binding, actual notice must be brought home to the party. "In America, however," the great law writer of that country observes, "the doctrine has been differently settled; and

CHAP. IX. *Protection.*

it is there uniformly held that the registration of a conveyance operates as constructive notice to all subsequent purchasers of any estate, legal or equitable, in the same property; (*Parkhurst* v. *Alexander*, 1 John. Ch. R. 394.) The reasoning upon this doctrine," he says, "is founded upon the obvious policy of the Registry Acts; the duty of the party purchasing, under such circumstances, to search for prior incumbrances, the means of which search are within his power; and the danger so forcibly alluded to by Lord Hardwicke, of letting in parol proof of notice, or want of notice, of the actual existence of the conveyance. The American doctrine," the same learned writer proceeds to remark, "certainly has the advantage of certainty and universality of application; and it imposes upon subsequent purchasers a reasonable degree of diligence only in examining their titles to estates. But this doctrine," he adds, "as to the registration of deeds being constructive notice to all subsequent purchasers, is not to be understood of all deeds and conveyances which may be, *de facto*, registered; but of such only as by law are required to be registered, and are duly registered in compliance with law. If they are not authorized or required to be registered or the registry itself is not in compliance with the law, the act of registration is treated as a mere nullity; and then the subsequent purchaser is affected only by such notice as would amount to a fraud:" (1 Stor. Eq. 324, 325.)

Notice to agent, notice to principal.

It has been a long-established rule of equity, that notice, whether actual or constructive, to an agent, is to be treated as notice to the principal, since it would be a breach of trust in the former not to communicate the knowledge to the latter (2 Fonbl. Eq. 154; Com. Dig. tit. "Chancery," 4, cc. 5, 6; 1 Stor Eq. 326; *Merry* v. *Abney*, 1 Cha. Cas. 38; *Brotherton* v. *Hatt*, 2 Vern.

574; *Jennings* v. *Moore*, *ib.* 609; *Sheldon* v. *Drummond*, Ambl. 624; *Coote* v. *Mammon*, 2 Bro. P. C. 596; *Le Neve* v. *Le Neve*, 3 Atk. 646); and this, even if the principal is an infant: (*Toulmin* v. *Steere*, 3 Mer. 222; *Sheldon* v. *Cox*, 2 Eden, 228.) It would, indeed, cause great inconvenience if the rule were otherwise, and notice would be avoided in every case by employing agents. Notice to the counsel or attorney is notice to the party who employs him in the transaction: (*Attorney-General* v. *Gower*, 2 Eq. Ca. Abr. 685; *Brotherton* v. *Hatt*, 2 Vern. 574; *Newstead* v. *Searles*, 1 Atk. 265; *Maddox* v. *Maddox*, 1 Ves. sen. 61; *Ashley* v. *Baillie*, 2 *ib.* 386: *Le Neve* v. *Le Neve*, 3 Atk. 646; S. C. 1 Ves. sen. 64: *Tunstall* v. *Trappes*, 3 Sim. 301.) Nor is it necessary that such counsel, attorney or solicitor should be employed in the whole transaction; if employed in any part of it, it will be sufficient. The preparation of the conveyance by the vendor's solicitor, therefore, will be sufficient to affect the purchaser with notice: (see *ante*, vol. i. p. 40.) But in order that notice may be binding, it was, until recently, considered that it must have been in the same transaction or negotiation; and that the circumstance of the same attorney, solicitor, counsel or agent, having been employed in the same thing by another person or in another business, which he might possibly have altogether forgotten, would not be sufficient to charge the principal: (Fonbl. Eq. lib. 3, c. 6, s. 5; 1 Stor. Eq. 327; Com. Dig. tit. "Chancery," 4, cc. 5, 6; *Fitzgerald* v. *Falconbridge*, Fitz. 207, 211; *Preston* v. *Tubbin*, 1 Vern. 286, 287; *Warwick* v. *Warwick*, 3 Atk. 291; *Worsley* v. *Scarborough* (*Earl of*), 3 Atk. 392; *Hall* v. *Smith*, 14 Ves. 426.) The more recent decisions have, however, qualified this doctrine, by ruling, that it will not be sufficient

CHAP. IX. *Protection.*

to prevent notice from attaching that the transactions are distinct, where one is so closely followed by, and connected with another, as clearly to give rise to the presumption that the prior transaction was present in the mind of the professional agent, and, whenever this is presumed, it will be considered as constructive notice, and the principal will be bound by it accordingly: (*Hargreaves* v. *Rothwell*, 2 Keen, 154, 159; 1 Stor. Eq. 327, n. 5.) Knowledge of incumbrance by an assigning trustee will affect a purchaser or mortgagee; but knowledge of the incumbrance by the assigning trustee will not affect a purchaser who is unaware of it (*Willoughby* v. *Willoughby*, 1 T. R. 763); nor will notice to a purchaser affect a sub-purchaser under him who has no such notice: (*Ferrers* v. *Cherry*, 2 Vern. 384; *Brandling* v. *Ord*, 1 Atk. 571: *Lowther* v. *Carleton*, 2 *ib.* 242; *Ingram* v. *Pelham*, Ambl. 153; *Mertins* v. *Jolliffe*, *ib.* 311; *Andrew* v. *Wringley*, 4 Bro. C. C. 136; (*Kenedy* v. *Daly*, 1 Sch. & Lef. 379.) Nor would a purchaser under the latter, even with express notice of incumbrances, be affected by it. If, therefore, one affected with notice conveys to another *without notice*, the assignee, in case he has the legal estate, shall protect himself against prior incumbrances: so, *vice versâ*, if an incumbrancer without notice assigns to one who has notice, yet the assignee may protect himself in like manner: (Ambl. 313; see also *Harrison* v. *Forth*, Pre. Cha. 51; *Lowther* v. *Carlton*, 2 Atk. 242; S. C. 2 Eq. Ca. Abr. 685; *Sweet* v. *Southcote*, 2 Bro. C. C. 66; *Macqueen* v *Farquar*, 11 Ves. 478.)

CHAPTER X.

INTERMEDIATE PROCEEDINGS FROM THE PERUSAL OF THE ABSTRACT TO THE COMPLETION OF THE PURCHASE.

I. Of clearing up and perfecting the Title.
II. Of the search for Incumbrances.
III. Of Indemnity against Incumbrances.

I. Of clearing up and perfecting the Title.

The purchaser's solicitor, on receiving back the abstract from counsel, if the title is approved of, should give early notice of the same to the vendor's solicitor; but if any objections are taken to the title, or any requisitions made, then, he should take care to forward such objections and requisitions to the vendor's solicitor, within the time appointed by the contract or conditions of sale; and if no time be appointed, he should, for the reasons already stated (see vol. i. p. 238), do so within a reasonable time, insisting on having the objections removed, or the requisitions complied with. If the vendor's solicitor assents to this, and proceeds to clear up the objections, it will then be necessary to reconsider the abstract, to see that all the requisitions have been duly complied with.

CHAP. X.

Of clearing up and perfecting title.

The purchaser's solicitor should, however, take care not to require the production of further documents or evidence than he is entitled to require; for where a purchaser had called for more than the vendor was bound to furnish, and the vendor, considering the purchaser would not be satisfied with what he was entitled to, had not afforded the necessary information, a specific performance was decreed on a good title being made out, without costs on either side: (*Newall* v. *Smith*, 1 Jac. & Walk. 263.)

Practical observations on objections and requisitions.

Before, however, a vendor's solicitor undertakes to remove any objections raised upon the title, or to comply with any other requisitions relating to it, it will be advisable to demand of the purchaser's solicitor whether these are the only matters objected to, or the only requisitions required (see *ante*, vol. i. p. 106); for it has not unfrequently happened, that where a purchaser is unwilling or unable to complete his purchase at the appointed time, his solicitor has raised frivolous objections which he knows to be unsustainable, merely for the purpose of spinning out the time, until the purchaser can either raise the money to pay for the property, or obtain some sub-purchaser or other to take the bargain off his hands.

Comparison of abstract with title deeds, &c.

The abstract ought in every instance to be compared with the title-deeds before it is submitted to counsel, by which means considerable time and expense would oftentimes be saved. It not unfrequently occurs, when the various documents are compared with the abstracts, that some discrepancy is discovered between them, which often requires a second opinion of counsel, thus increasing costs, and adding to those vexatious delays which are too often incidental to the completion of a purchase. Another great advantage of a previous comparison of the documents with the abstract, is, that it enables the

purchaser's solicitor, by short marginal remarks, to draw the attention of counsel to many facts and circumstances that are not sufficiently disclosed by the abstract, but which are often highly important to the title. Now the vendor's solicitor ought not to neglect this, because it is clearly established that the vendor must pay the costs of all such examinations, in case the title turns out bad, it being for his advantage that such previous investigation should be gone into; for, if this were not done, great additional expense might be incurred: (*Hodges* v. *Litchfield* (*Earl of*), 1 Scott, 449.) Still, notwithstanding the advantage of adopting the above course, it is not the one usually followed by the profession, and some eminent writers have even gone so far as to approve of the practice of deferring this examination until after the abstract has been perused by counsel, in those cases where access could be readily had to the deeds in the first instance. That a previous comparison would be most advantageous to the purchaser, is too obvious to require any comment whatever. The course, therefore, which can best attain so desirable an end, is the course, and the only course, a solicitor, if he faithfully discharges his duty to his client, can pursue.

How the title-deeds should be compared with the abstract.

The comparison of the title-deeds or other documents with the abstract is a most important duty, and requires the strictest scrutiny. If done in a cursory or careless manner, the most serious consequences may not only possibly, but will, most probably, ensue from it. It has, indeed, not unfrequently happened that an important clause, sometimes by accident, at other times by design, has been altogether omitted, and others have been abstracted in such a manner as to convey a very different signification from what the terms in the abstracted assurance would imply. Another point to which the attention

CHAP. X.

Of clearing up and perfecting title.

must be carefully directed is, to see that the instruments, whether deeds, or wills, are duly executed and attested; that every party, who is named as a conveying party to a deed, has placed his hand and seal thereto, and that each execution has been duly attested. And where it is necessary for any receipt for the consideration-money to be indorsed thereon, it must also be seen that such receipt clause is duly signed and witnessed: (*Kennedy* v. *Green*, 3 Myl. & K. 699.)

Where registry, or enrolment is essential to a deed it must be ascertained that such has been done.

If the deed is professed to be enrolled, or is required to be registered, it must be ascertained that such deed has been enrolled or registered accordingly; and it must lastly be seen that every deed is properly stamped,—a subject of investigation that has been too often neglected, and yet a most important one, requiring great accuracy and a minute knowledge of the stamp laws: (1 Prest. Abs. 201.)

Vendor is bound to produce documents in verification of abstract.

The vendor is bound to produce all documents set out in the abstract, although they are not in his possession, nor the purchaser entitled to have them delivered over to him on completing his purchase (*Relingall* v. *Lloyd*, 2 Nev. & Man. 410; *Jermain* v. *Eggleston*, 5 Car. & Pay. 172); but this relates only to documents of such a nature as are usually handed over to the purchaser, and does not include records, such as fines, or recoveries, or wills of real estate; for in the latter cases, office extracts, probates, and copies, are all that a purchaser has any right to call for. The expenses of the production of all deeds not in the vendor's possession, as also of attested copies, journeys, and all other incidental expenses, unless otherwise stipulated for in the conditions of sale, must be borne by the vendor (*Boughton* v. *Jewel*, 15 Ves. 176; *Dare* v. *Tucker*, 6 Ves. 460; and see *ante*, vol. i. p. 32); but this will not, generally speaking, extend to attested copies of instruments on

record. Still there are cases in which it seems a vendor will be required to supply attested copies, even of instruments of record; for where he has not the instrument itself, and is unable to produce it, he is bound to obtain an attested copy of it, in order to enable the purchaser to compare it with the abstract, and on the purchase being completed, it will become the property of the purchaser, unless the vendor retains other estates holden under the same title. And it is also said that a purchaser is entitled to a covenant from the vendor for the production of deeds that are of record: (*Prosser* v. *Watts*, 6 Mad. 59; *Harvey* v. *Phillips*, 2 Atk. 541; *Holcroft* (*Lady*) v. *Smith*, 2 Freem. 260; see also *Medlicott* v. *Joyner*, 1 Mod. 4; 6 *ib.* 225.) But the vendor is not bound to defray the expenses of any journeys unnecessarily incurred by a purchaser's solicitor in comparing the documents of title with the abstract. If, therefore, the title deeds are in London, then, according to the established rules of practice, a country solicitor should instruct his London agent to inspect the deeds there, and he will not be permitted to charge the costs of his journey to town for that purpose: (*Alsop* v. *Lord Oxford*, 1 Myl. & Kee. 564.) But it will be otherwise where the documents of title are in the hands of persons residing in different parts of the country, for in that case the purchaser's solicitor may charge the vendor for all the journeys necessary for comparing them with the abstract, and will not be obliged to employ an agent in a country town, where the documents may chance to be, to perform that duty, in order to save those expenses: (*Rawlings* v. *Vincent*, Carth. 124; *Hughes* v. *Wynne*, 8 Sim. 85.)

Lost deeds.

In case any of the deeds are lost or destroyed, a question necessarily arises as to whether a purchaser can be compelled to accept a title so circumstanced. It seems, however, to be now decided, that

CHAP. X.

Of clearing up and perfecting title.

the mere fact of the loss or destruction of title-deeds will not afford a purchaser sufficient cause for rescinding his contract, if the vendor can deliver over copies which would be evidence at law, and prove that the originals were duly executed and delivered; but this the vendor is bound to supply the purchaser with, and unless he can do so, the purchaser will be entitled to annul the contract (*Bryant* v. *Busk*, 4 Russ. 4)—and this, notwithstanding the deeds be destroyed by accident, as by fire or otherwise. For, as Sir John Leach observed (4 Russ. 4), every vendor must necessarily be bound to furnish the purchaser with the means of asserting his title and defending his possession. The title-deeds are the ordinary and primary means for that purpose. If the primary means do not exist, there may be secondary means to the same end. There may be means of proving what are the contents of the deeds, and that the deeds were duly executed and delivered. Assuming that the abstracts duly and fully prove the contents of the deeds, yet it remains to be proved that such deeds were duly executed and delivered; and the vendor must furnish the vendee with the means of such proof; and if no such proof can be furnished, the purchaser is entitled to be discharged.

Where deeds have been accidentally destroyed parties may be made to concur in subsequent conveyances.

Where any deeds have been destroyed by fire or accident, the vendor, who was a party to such deed, may be compelled, on a subsequent sale, to join in the conveyance of the property to a new purchaser, or to execute a new conveyance to the party claiming under it, in case he retains the possession of the property: (*Bennett* v. *Ingoldsby*, Finch, 262.)

In leaseholds, loss of mesne assignments may be made good by recitals.

In the case of leaseholds, the loss of deeds of mesne assignments may be made good by the recitals of them contained in other deeds. Where a deed has its seals cut off, evidence may be given that it was originally sealed: (*Bolton* v.

Bishop of Carlisle, 2 H. Black. 259; see also 2 B. & C. 231.)

It will be necessary not only to call for all leases, counterparts, and agreements relating to the property, but also, whenever the property is in the occupation of a tenant, to inquire into the nature of his tenancy; for, if a purchaser neglect to do this, he will be considered to have implied notice of that title—notice of a tenancy being construed as implied notice of the terms under which the premises are holden: (Stew. Abs. 42; 3 Prest. Abs. 401; see also *Taylor* v. *Stibbert*, 2 Ves. 440; *Daniells* v. *Davidson*, 16 *ib.* 249; *Douglas* v. *Whiting*, *ib.* 254, cited; *Allen* v. *Anthony*, 1 Mer. 282; *Taylor* v. *Baker*, Dan. 71.)

Occupation, how notice of terms of tenancy.

Land-tax and poor-rate assessments (*Doe dem. Smith* v. *Cartwright*, 1 Car. & Pay. 218; see also *Harrison* v. *Blades*, 3 Camp. N. P. C. 457) are usually received as evidence of seisin and identity of parcels; as are also receipts of rent, old leases, or counterparts of leases—also maps, terriers, and plans of the property. These facts may also be shown by the evidence of parties well acquainted with the property; as of present or former occupiers; and the declarations of a deceased occupier as to the person of whom he held the premises, has been holden sufficient evidence of that fact, —such declarations being considered as made against his own interest, upon the recognised principle that the possession of every occupier is, *primâ facie*, taken to be a seisin in fee, the identity of the lands being, of course, proved: (*Peacable dem. Uncle* v. *Watson*, 4 Taunt. 16; see also *Doe dem. Human* v. *Pettet*, 5 B. & Ald. 223; *Doe dem. Bagally* v. *Jones*, 1 Camp. N. P. C. 367.) Where it was necessary to prove the identity of parcels, or seisin, through the medium of persons acquainted with the property, the practice, until recently, was to require the facts so stated to be supported by affidavit; but now,

What will be sufficient evidence of the seisin and identity of the parcels.

CHAP. X.

Of clearing up and perfecting title.

a declaration, in pursuance of the statute of the 6 Will. 4, for the suppression of extra-judicial oaths, is substituted instead. Where the title is derived through an heir, it will be necessary to ascertain that he was seised of the property, either actually or constructively. An actual entry may be made either in person, or by some other person on his behalf—as his guardian, for instance; and an entry by a stranger, on behalf of an infant, has been considered in the light of an entry by a guardian for that purpose. The entry of one joint or co-parcener will also be treated as the entry of all. A constructive acquisition may be inferred, where a person can be shown to have exercised acts of ownership over the property, or received the rents and profits (*Davis* v. *Lowndes*, 7 Scott, 22); and even the continued possession by a tenant of the ancestor under a lease, by *elegit*, or by statute, will be sufficient evidence of a seisin on the part of the heir, without any actual receipt of the rent, or entry by him on the premises : (Co. Litt. 15, a; *Newman* v. *Newman*, 3 Wils. 528; *Bushby* v. *Dixon*, 5 Dow. & Ry. 126.) With respect to incorporeal hereditaments, such as rents or advowsons, as there can be no actual entry made upon property of this description, the proof of seisin must be evidenced by showing acts of ownership,—as by receiving the rents in the one instance, and by presenting to the living in the other: (Com Dig. tit. " Seisin," C.)

As to the property in the abstract.

As long as the contract remains open, the general property of the abstract is neither in the vendor nor in the vendee absolutely. If the sale goes on, it becomes the property of the vendee. In the meantime the vendee has a temporary property, and a right to keep it, even if the title be rejected, until the dispute be finally settled, for his own justification, in order to show on what ground he did reject the title. A purchaser is

entitled to an abstract for the purpose of ascertaining whether the vendor can confer a marketable title. He has a right to retain it for the purpose of taking a counsel's opinion upon it, and also for the purpose of further investigating the title; and he will, moreover, be entitled to keep it, for the purpose of preparing the conveyance, in order that he may see who are the proper parties, what form of assurance is expedient, what parcels are to be inserted, or the like. But if the contract is rescinded he will be bound to return it to the vendor.

Vendor will be entitled to counsel's opinion.

And for the same reason, if a counsel's opinion has been taken upon the abstract, it ought to be transmissible with it to the vendor, although it has been obtained at the costs of the purchaser.

Purchaser should be careful not to deal with the estate as owner, until satisfied with title.

A purchaser should be careful not in any way to deal with the estate as the owner, until, by comparing the title deeds with the abstract, he ascertains that a clear and marketable title can be made to the property. For the circumstance of the abstract being so prepared as to deceive a purchaser into the belief that the title is unimpeachable, will not, unless actual fraud can be shown, be sufficient to render the vendor responsible; because the purchaser, by exercising proper caution, might have discovered that the abstract did not tally with the documents expressed to be set forth in it. Hence, if a good title appears on the face of an abstract, and the purchaser re-sells at a profit, and upon examination of the deeds the title turns out to be bad, and he has to pay the second purchaser the costs of investigating the title, yet he cannot recover them over; neither could he recover the costs of the re-sale, nor any damages: (*Walker* v. *Moore*, 10 B. & C. 416.)

Title may possibly be good, although there

It may be proper here to remark, that a title may possibly be good although there are no title deeds whatever, and in the late case of *Cottrell* v.

are no title deeds.

Watkins (1 Beav. 361), the Master of the Rolls said he was perfectly satisfied that there were good titles of which the origin could not be shown by any deed or will; but then you must show something that is satisfactory to the mind of the court, that there has been such a long and uninterrupted enjoyment and dealing with the property, as to raise a reasonable presumption that there is an absolute title in fee simple.

Purchaser has no right to compel vendor to prove the execution of title deeds.

A purchaser has no right to call upon a vendor to prove the execution of the title deeds; and if the vendor brings an action against the purchaser for the non-completion of the contract, the latter has no right to call upon him to prove such execution: (*Thompson* v. *Miles*, 1 Esp. N. P. C. 184.) In purchases, the practice is to deliver an abstract, upon which a correspondence or communication by word of mouth takes place, and in most cases the question, if any arises, is on the law as it affects the title disclosed under such circumstances; a party having admitted the deeds to be authentic, and the legal effect of them as to the title being the only matter in dispute, is not to be allowed to turn round at the trial and require proof of the genuineness of the deeds themselves: (*Laythoarp* v. *Bryant*, 1 Bing. N. C. 44; see also *Crosby* v. *Percy*, 1 Camp. N. P. C. 303.) Whichever party has the right to the possession of the abstract for the time being may recover it from the other, notwithstanding the ultimate right of the property may possibly reside in him: (see 2 Dix. "Title-deeds," 461; *Roberts* v. *Wyatt*, 2 Taunt. 268.) But whenever a purchaser rescinds a contract, he is bound to return the abstract; for it would be a mischievous thing, if accounts of a person's title could get abroad; and therefore not only has the abstract to be returned, but no copy is to be kept, lest it should be used for a mischievous purpose: (*Ib.*)

Whoever has a right to the abstract may maintain trover for it.

It may be proper to remark here, that notwithstanding the purchaser approves of title as it appears on the face of the abstract, still this will not preclude him from showing, by other evidence, that the title is a bad one : (see Alderson, B.'s. remarks in *Attorney-General* v. *Sitwell*, 1 You. & Coll. 571.) And where, by the express terms of the conditions of sale or agreement, the vendor is not to be called upon to carry back his title beyond a certain stated period, this will not prevent the purchaser from showing, that from some cause or defect anterior to such period, the vendor is unable to confer a marketable title : (*Shepherd* v. *Keatley*, 1 C. M. & R. 117; S. C. 4 Tyr. 571) If, then, the title should prove defective, and be rejected by the purchaser, the vendor's solicitor should lose no time in calling for a return of the abstract, together with the opinion of counsel, if any has been taken upon it (see 2 Taunt. 270), as it might prove very prejudicial to the vendor's interest to have the weakness of his title left exposed in the hands of those persons.

Purchaser rescinding contract is bound to return abstract to vendor.

Approval of title by purchaser as appears by abstract, will not preclude him from showing the title a bad one.

All reasonable expenses incurred in the investigation of the title, including opinions of counsel, must be defrayed by the vendor, whether the contract is rescinded on account of such title proving unmarketable : (*Fleureau* v. *Thornhill*, 2 Bl. Rep. 1078.)

Reasonable expenses incurred in investigating title must be borne by vendor.

SECTION II.

OF THE SEARCH FOR INCUMBRANCES.

Course of proceeding for the discovery of incumbrances.

If the purchaser's solicitor is satisfied with the title, as it appears from the abstract and the documents therein referred to, his next course of proceeding should be to ascertain if there are any incumbrances affecting the property which the abstract does not disclose. These it will be his duty to search for; but in addition to this, he ought also to ask the vendor's solicitor if there are any incumbrances, and whether, according to the best of his knowledge and belief, the vendor, or any of his ancestors or testators, have sold, mortgaged, or in any way whatever incumbered the property; and also whether there are any outstanding estates, judgments, annuities, crown debts, or incumbrances of any kind, except such as appear on the abstract, or have otherwise been disclosed in writing to the purchaser, or his solicitor. In some parts of the kingdom, particularly in the west of England, a practice has sprung up amongst the profession of requiring a declaration to this effect from the vendor, a form of which will be found in the Appendix (see *infra*); and it would afford a most beneficial protection to purchasers if this practice could be universally established. If the vendor's solicitor denies that there are any incumbrances, or wilfully conceals them, he will render himself personally liable to the purchaser: (*Arnot* v. *Briscoe*, 1 Ves. sen. 951; *Evans* v. *Bicknell*, 6 Ves. 193; *Richards* v. *Barton*,

6 Esp. N. P. C. 268; *Burrowes* v. *Lock*, 10 Ves. 470.) The vendor is bound to discharge every incumbrance before he can call upon the purchaser to accept a conveyance, or to pay the purchase-money: (*Anon.*, 2 Freem. 106; *Vane* v. *Barnard* (*Lord*), Gilb. Eq. Rep. 6; *Serjeant Maynard's case*, 2 Freem. 1.) And if the incumbrances are such that the purchase cannot be completed on that account, the purchaser will be entitled to recover all his costs from the vendor, including also the costs of the conveyance, and this, it seems, whether the search was made before or after such conveyance was prepared. If the vendor's solicitor, on being asked, replies that there are no judgments, the search may be postponed until immediately before the execution of the conveyance: (*Richards* v. *Barton*, 1 Esp. N. P. C. 268.)

Search for judgments, how conducted.

This search is now attended with less trouble and difficulty than formerly. Previously to the statute 1 & 2 Vict. c. 110, the practice was to search for judgments for ten years, and if any judgments appeared within that time, to search for ten years from the time of the most early judgment, and in like manner for ten years from each judgment which was so found, stopping at the period when the owner became adult, unless there was reason to suspect there were judgments against him whilst a minor. But now, all judgments, in order to become binding upon purchasers, must, in pursuance of the statute 1 & 2 Vict. c. 110, be registered every five years, so that there will be no occasion to extend the search beyond that period.

Search for judgments now necessary as well in case of leasehold and copyhold, as of freehold estates.

The search must now be made as well in the case of leasehold and copyhold, as of freehold estates; and, notwithstanding it was formerly considered that leasehold estates were only bound from the time the writ of execution was delivered into the sheriff's office (*Jones* v. *Atherton*,

CHAP. X.

Of search for incumbrances.

2 Marsh. 275; see also *Burdon* v. *Kennedy*, 3 Atk. 379; *Jeans* v. *Wilkins*, 1 Ves. 95), the statute of Victoria has rendered them liable in the same manner as freeholds: (1 & 2 Vict. c. 11; Prideaux on Judgments, 59, 72.)

Entailed property now subjected to judgments.

It must also be kept in mind, that entailed property is now subjected to judgments, which will be binding, not only upon the tenant in tail himself, but also on the issue in tail, and the remainder-man, where the entail could have been barred without the consent of the protector: (as to which see *ante*, pp. 172–182.) So that a purchaser of property of this description must search for judgments in the same manner as if the purchased lands were of fee simple tenure.

Search cannot be dispensed with even in sales by assignees of bankrupts.

Nor can such search be dispensed with, even where the sale is by the assignees of a bankrupt; for, notwithstanding the act now under consideration provides that the judgment creditor shall not be entitled to a preference, in the case of the bankruptcy of the person against whom such judgment shall be entered up, unless such judgment shall have been entered up one year at least before the bankruptcy, it does not deprive him of such preference, where such judgment has been entered up before that period. The search, however, in such cases may be restricted to the commencement of one year next preceding the bankruptcy. Mr. Prideaux, in his able treatise on this subject, also says, pp. 81, 82, that "it may be useful to observe, by way of caution, that all judgments entered up against a mortgagor, subsequently to the mortgage, are charges upon the surplus of the moneys arising from a sale under a power contained in the mortgage deed, and that the mortgagee would be bound to apply such surplus in the proper discharge of all such judgments of which he has notice." Remarking, at the same time, that "there was no reason to doubt that, even under the old law, all such judg-

Mortgagor.

ments were general charges in equity upon the surplus moneys in the hands of the mortgagee." In support of which, he refers to Mr. Serjeant Hill's opinion, stated in *Forth* v. *The Duke of Norfolk* (4 Madd. 506, note.)

Facilities afforded by recent enactments in the search for judgments.

The inconvenience and uncertainty that were formerly incurred in searching for judgments where the vendor had a common name, which might have been equally applicable to many other persons (as the Smiths, Browns, Jones's, and Robinsons', for instance), are to a great extent, if not altogether, remedied by the 19th section of the statute, by which it is provided that no judgment shall affect any purchaser, unless a minute containing the name and usual or last place of abode, and the title, trade, or profession of the person whose estate is to be affected thereby, shall be left with the senior Master of the Court of Common Pleas, who shall enter the name in a book in alphabetical order by the name and addition of such person.

Search for judgments can never be dispensed with, if there is the slightest probability of their existence.

If there is the slightest probability of judgments, a purchaser's solicitor can rarely, with safety, dispense with searching for them; for notwithstanding the 13th section of the act (1 & 2 Vict. c. 110) declares that purchasers without notice shall not be deprived of the equitable protection they previously possessed, still such notice may probably be inferred from very slight circumstances, and, if proved, would give the judgment creditors the benefit of those extensive remedies the act confers upon them: (Prid. on Judgments, 55.)

Solicitor liable if his client suffers any loss in consequence of the former neglecting to search for judgments.

It must also be recollected, that if the purchaser sustains any loss or injury in consequence of his solicitor's negligence in searching for incumbrances, the latter will become personally liable to make good the same, and the purchaser will be entitled to maintain an action against him, and to recover damages

accordingly: (*Forsall* v. *Jones*, 1 Vin. Abr. 54; *Brooks* v. *Day*, 2 Dick. 572; *Green* v. *Jackson*, Peake N. P. C. 336; *Bakie* v. *Chandless*, 3 Camp. N. P. C. 17; *Ireson* v. *Pearman*, 5 Dow. & Ry. 187.)

Vendor not bound to discharge incumbrances discovered after the conveyance.

It may be proper also to remark, that although a vendor is bound to discharge all incumbrances prior to the conveyance, he is not bound to discharge those discovered afterwards, unless the covenants (as indeed is usually the case) are sufficiently ample to include them; but if they are not, the purchaser will, generally speaking, be wholly debarred of remedy against the vendor, as well in equity as at law (*Serjeant Maynard's case*, 2 Freem. 3; see also 3 Swanst. 651; *Cripps* v. *Read*, 6 T. R. 606; *Mathews* v. *Hollings*, Woodfall's Land. & Ten. 35; *Bree* v. *Holbeach*, Doug. 654; see also *Roswell* v. *Vaughan*, Cro. Jac. 196; *Lysney* v. *Selby*, 2 Lord Raym. 1118; *Goodtitle* v. *Morgan*, 1 T. R. 755; *Hitchcock* v. *Giddings*, 4 Pri. 135); unless where the vendor was guilty of a fraud by concealing a defect in the title he was aware of, or suppressing some document by which this incumbrance was created, or on the face of which it appeared; for then the purchaser would not only be enabled to maintain a suit in equity for relief, but might even bring an action at law on the case for the deceit.

Necessary to ascertain that disentailing deeds have been duly enrolled.

Where any disentailing deeds occur in the title, it must be seen that they have been duly enrolled in pursuance of the Fine and Recovery Substitution Act, 3 & 4 Will. 4, c. 74, and also, which is a matter of vital importance, that the time of enrolment has not expired. And even where the time prescribed in the statute for enrolment has not expired, the purchaser's solicitor should take care to see that this is done before the conveyance is executed, and he should also ascertain by search that no previous assurance has been enrolled.

And where any acknowledgments of married women had been taken, he must ascertain that they were taken before the proper commissioners; for the commissioners appointed under the statute have no power to act beyond the local limits of their respective districts, so that an acknowledgment taken elsewhere would be wholly inoperative. It must likewise be shown that the acknowledging parties were of full age,—a minor, though a married woman, being under a disability to acknowledge a deed.

That acknowledgments of married women have been properly taken.

Where it is at all probable that the vendor is an accountant to the crown, a search should be made for crown debts. This must be made in the same office in the Common Pleas where judgments are to be searched for, and in which an index is kept of all debtors and accountants to the crown: (2 Vict. c. 11, s. 8.) This, however, only relates to the crown debts created or secured before the 4th of June, 1839. If, therefore, crown debts may have been incurred previously, further inquiries should be made to ascertain whether such debts really exist or not. If such debts are found to exist, the purchaser may now be exonerated therefrom by paying the same into the Exchequer, under the provisions of the stat. 1 & 2 Geo. 4, c. 121, s. 10, previously to which a purchaser would not have been safe, although his money was actually paid into the Exchequer, unless he had procured a *quietus* to be entered up of record.

Crown debts.

The same office in the Common Pleas should also be searched where there is any suspicion that a suit is pending respecting the property; but unless a purchaser has express notice of such pending suit, he will not be bound by it until a memorandum or minute is left with the senior Master of the Common Pleas, who is to enter such particulars in a book in alphabetical order. As there must be a re-entry every five years, it

Lis pendens.

CHAP. X.

Of search for incumbrances.

will be sufficient to confine the search to that period: (2 & 3 Vict. c. 11, s. 8.)

Search in case of suspected bankruptcy or insolvency.

When the vendor has been in difficulties, it will be advisable to search the Insolvent Court; and where a vendor was in trade, in case there was any apprehension of his having committed an act of bankruptcy, it was usual to search the Bankruptcy Court for any affidavit of debts by creditors which might have been made the foundation of a commission or fiat in bankruptcy; but now, as all *bonâ fide* conveyances by a bankrupt previous to issuing a fiat against him are rendered valid, notwithstanding a prior act of bankruptcy, unless the purchaser had notice of it (1 & 2 Vict. c. 4; see also vol. i. 195, 196), and as the issuing a fiat is pretty certain to be known to all parties having any immediate transactions with the bankrupt, a search or inquiry of this nature is rarely made. Where, however, the vendor is a certificated bankrupt, and contracts to sell after-purchased property, it will be the duty of the purchaser's solicitor to see that the certificate of conformity has been duly enrolled.

Registered documents.

Where the lands lie in a register county, the register offices should be searched, in order to see that there are no registered incumbrances, as also to ascertain that the title deeds have been duly registered, and the terms of the Registry Act duly complied with; and, notwithstanding the practice may not be to register wills, the purchaser has a right to insist upon this being done, and his solicitor should see that such be done before he completes the purchase, as a *bonâ fide* purchaser, without notice of the will, would, by registering his conveyance, be entitled to a preference to the devisee and all persons claiming under him: (*Jolland* v. *Stainbridge*, 7 Ves. 478.)

Annuities.

Where the property is much involved and

incumbered, it will be prudent to search for memorialized annuities; but if the lands are situated in a register county, it will be sufficient to confine the search to the registry office.

If the property is of a copyhold tenure, the court rolls should be inspected, in order to ascertain that none of the documents have been omitted in the abstract.

Copyholds.

If the incumbrances are of such a nature that the vendor is unable to discharge them, the purchaser will, as we have already seen (vol. i. p. 18), be entitled to annul the contract, and cannot be compelled to complete his purchase in consideration of any indemnity the vendor may think proper to offer him (*Farrer* v. *Nightingale*, 2 Esp. N. P. C. 639; *Barnwell* v. *Harris*, 1 Taunt. 430; *Hearne* v. *Tomlins*, Peake, N. P. C. 192; *Hibbert* v. *Shee*, 1 Camp. N. P. C. 113; *Duffell* v. *Wilson*, *ib.* 401; *Balmanno* v. *Lumley*, 1 Ves. & Bea. 225; *Paton* v. *Brebner*, 1 Bligh. 66; *Ross* v. *Boards*, 3 Nev. & Per. 382; *Aylett* v. *Ashton*, 1 Myl. & Cra. 114); neither, on the other hand, can the purchaser hold the vendor to his bargain, and call upon him for such indemnity: (*Ib.*) Formerly, indeed, the rule seems to have been otherwise (*Halsey* v. *Grant*, 13 Ves. 73), and it used to be referred to the Master to consider what the indemnity should be; but it now seems to be settled that a purchaser cannot be compelled to accept a title with an indemnity, nor a vendor be called upon to give one.

If vendor is unable to discharge incumbrances purchaser may rescind contract.

SECTION III.

OF INDEMNITY AGAINST INCUMBRANCES.

Vendor and purchaser may enter into arrangements with respect to indemnity against defective titles or incumbrances.

NOTWITHSTANDING a purchaser cannot be compelled to take an incumbered title with a compensation, or a doubtful title with an indemnity, or even to accept an equitable title, it often happens that he has no objection to do so, upon having a proportionate abatement in the purchase money, or upon receiving a sufficient indemnity to protect him against any loss he may incur in case his title should be disturbed. It sometimes happens that getting in the legal estate would be attended with great difficulty, in consequence of its being unknown in whom it vested, or it being vested in several persons; as where the legal estate of a surviving trustee descends upon several daughters as co-parceners; some of whom may be abroad, or their residence unknown, others dead, having left infant or lunatic heirs, or it is uncertain whether the heirs be living or dead, and many other instances which might be enumerated, where the difficulty and expense would be so great as in small purchases to exhaust considerably more than the full amount of the purchase money. It certainly is true that considerable facilities have been afforded by recent enactments towards counteracting the evils we have just alluded to, by empowering the Court of Chancery to direct some person to convey (1 Will. 4, c. 60; 4 & 5 Will. 4, c. 23); still this can only be done at a considerable cost, which in small purchases must

be severely felt; and therefore vendors are often willing to sacrifice a considerable portion of their purchase money, and purchasers to accept a defective title, rather than submit to the expenditure which must necessarily be incurred in obtaining the necessary order of the Court of Chancery for a conveyance under such circumstances. It also sometimes happens that, although a title is safe from disturbance, the owner is still unable to make a good title; as for instance where two parties had equal equitable title to the same property, and one of them has defeated the right of the other by length of possession, and thus acquired an absolute equitable interest, yet the legal right may still remain unbarred: (stat. 3 & 4 Will. 4, c. 27; *Cholmondeley* v. *Clinton*, Turn. & Russ. 107.) It seems, also, that where a purchaser has expressly stipulated to take an equitable title only, he would be decreed to do so; but then the equitable title must be unobjectionable, and it must be carried back so as to show the root or origin of the title, in the same manner as in purchases of the legal estate; and the vendor must also show that the legal estate which is outstanding cannot possibly be used adversely, or in any way that may prove prejudicial to the purchaser's interest in the property.

As to purchase of an equity of redemption.

An equity of redemption is often sold subject to the mortgage debt. One great disadvantage, however, attending a purchaser of this kind is, that if the vendor has mortgaged two estates to the same mortgagee, the purchaser will not be entitled to call upon the mortgagee to allow him to redeem the mortgage of the purchased property, unless the mortgage of the other estate be also discharged; neither will it make any difference whether both mortgages were made at the same or at separate times; nor whether such purchaser had or had not notice that such other mortgage had been made: (*Ireson* v. *Denn*,

2 Cox, 425; see also *Titley* v. *Davis*, Ambl. 733, cited; *Ex parte Carter*, *ib.*; *Tribourg* v. *Lord Pomfret*, *ib.* n. 21; *Roe* v. *Soley*, 2 Blackst. 726; *Cator* v. *Charlton*, *Collett* v. *Munden*, 2 Ves. 377, cited; *White* v. *Hillacre*, 3 You. & Coll. 597.) A purchaser, if there is the slightest ground for apprehending that the vendor has executed any other mortgage, should give notice to the latter of his intended purchase, and at the same time ask him whether he has any other incumbrances on property of the vendor, when, if the mortgagee should answer in the negative, he would be bound by his answer, and the purchaser would not then be precluded from redeeming or paying off his own mortgage, whether the vendor had or had not mortgaged any other estates to the mortgagee. And, under any circumstances, a purchaser of an equity of redemption should give immediate notice to the mortgagee of his purchase; otherwise, if the latter were to advance any further sums of money to the mortgagor, it would be binding on the purchaser, notwithstanding the lands are situated in a register county, and the mortgage deed is duly registered.

Right of vendor of equity of redemption to require purchaser to indemnify him against mortgage debt.

The vendor of an equity of redemption will be entitled to call upon the purchaser to indemnify him against the mortgage debt whether there be any stipulation to that effect or not, it being an established rule that, whenever a party purchases an estate subject to incumbrances, he is bound to indemnify the vendor against them, although he did not expressly engage to do so, and the purchaser having become the owner of the estate, he must be supposed to indemnify the vendor against the mortgage. In the purchase deed, therefore, the purchaser usually covenants to pay the mortgage debt and interest, and to indemnify the vendor therefrom: (see the form in the Appendix.) In order, also, to prevent those disputes and misunderstandings which have often arisen

between the real and personal representatives, it will be advisable to add a clause to the purchase deed, declaring whether or not the personal estate of the purchaser shall, as between his heir and executor, be the primary fund for the payment of the mortgage money: (see the form *infra.*)

Covenant from vendor of an equity of redemption to indemnify purchaser from mortgage debt is a covenant in gross, and not running with the land.

A covenant of this kind will, however, it seems, be only a covenant in gross, and not binding on the assignees of the land; for in order to make covenants run with the land, there must be a privity of estate between the covenanting parties, and this in the eye of the law does not exist between a mortgagor and a mortgagee, the mortgagor having no legal estate in the land, that being vested in the mortgagee; consequently, a covenant entered into by a purchaser with a mortgagor is considered in the same light as if entered into with a mere stranger to the land: (*Webb* v. *Russell*, 3 T. R. 395.)

Mortgagor has no right to call upon mortgagee to produce title deeds.

Another difficulty, also that often occurs in the sales of equity of redemption, is the inability in the vendor to show any title to the premises, as he has no power to compel the mortgagee to produce his title deeds, or to furnish him with an abstract of them. His only remedy is to pay off the mortgage and then take up the title deeds. Even if the mortgagor should himself have preserved a duplicate abstract, still, without the mortgagee's consent, the purchaser will have no opportunity of comparing it with deeds. But in spite of this formidable objection, where a good title appears on the face of the abstract, a purchaser of the equity of redemption is often content to rest satisfied with this imperfect evidence of title, relying upon the circumstance that, when the mortgagee's solicitor accepted the security, he took especial care to see that the title deeds corresponded with those set out in the abstract.

A limitation over by way

An estate being subjected to a limitation over

CHAP. X.

Of indemnity.

of executory devise forms a fatal objection to the title.

by way of executory devise will always form a fatal objection to a title, because a vendor cannot by any act of his defeat the ulterior limitation (*Pells* v. *Brown*, Cro. Jac. 590; *Hamington* v. *Rudyard*, cited *Lampet's case*, 10 Co. 52; *Lee* v. *Lee*, Moore, 263); still, a purchaser may often buy an estate which is liable to be defeated by a limitation over by way of executory devise, without any danger of eviction or disturbance, but this must of course depend upon a variety of circumstances. We will suppose, for example, an estate being devised to A. and his heirs, but with a limitation over to B. in case A. should die, leaving no children or issue at the time of his decease. In this case A. will take an estate in fee, subject to a limitation over by way of executory devise: (*Porter* v. *Bradley*, 3 T. R. 143; *Doe dem. Barnfield* v. *Walton*, 2 Bos. & Pull. 324; *Doe dem. Sheers* v. *Jeffery*, 7 T. R. 789; *Doe dem. King* v. *Frost*, 3 B. & A. 549; *Doe dem. Smith* v. *Webber*, 1 B. & A. 713.) Now, during the whole of A.'s lifetime, his estate will be contingent, and the probability of its becoming absolute will depend upon whether or not he leaves any issue at the time of his death. If he has a large, numerous and healthy offspring, then, in all human probability, some of these will outlive him, but these chances are lessened as the offspring are less numerous or healthy, and still more if there are no offspring at all, whilst the prospect of ever having any may in some instances be so remote, or improbable, as not to afford the shadow of a chance that the contingent estate will ever become absolute.

As to executory limitations over.

The like observations are also applicable to the executory limitation over. Its ultimately becoming a vested estate may sometimes be calculated upon as a certainty, as in a case like that above supposed, where, if the first taker is not only without issue, but is also a female beyond

the age of child-bearing; or an idiot, or incurably insane, or a person physically incapable of ever having children. It may be rendered less certain where the first taker, although he has no issue at the time, is not incapable of having any; and thus it may go on, until the scale is so completely turned the other way, by the first taker having so numerous an offspring, as to render their dropping off in his lifetime so improbable, that the chance of the executory limitation ever becoming a vested estate becomes next to an impossibility.

Indemnities usually given in the case of doubtful or imperfect titles.

Where there is a reasonable doubt that the estate of the first devisee may fail of becoming absolute by his death without issue, it has sometimes been the practice to effect an insurance on his life; at other times a bond has been given, either with or without sureties; and sometimes the purchase-money has been placed in the hands of trustees to be invested in stock, or some other security, to be paid over to the persons who would have been entitled to the purchase-money upon the estate becoming absolute, or to be repaid to the purchaser by the happening of the contingency upon which the limitation over by way of executory devise was to become a vested estate.

A common deed stamp will be sufficient to cover the assurance whenever the consideration is stock without any reference to its amount.

In assurances of this description, if the parties are willing to incur the risk of the rise and fall of the stocks, a considerable saving in stamp duty may be effected by previously investing the purchase-moneys in stock, and making such stock the consideration for the purchase; for in this case a common (1*l.* 15*s.*) deed-stamp will be sufficient to cover the assurance; which will be considered merely in the nature of an exchange, the estate being conveyed in consideration of the stock transferred; nor has the Stamp Act 55 Geo. 3, c. 184, imposed any *ad valorem* duty on sales in consideration of stock.

CHAP. X.

Of indemnity.

The chief objection to arrangements of this nature is, that the purchase-money is kept tied up, whilst, at least, in nine cases out of ten, where property of this kind is sold, the vendor is in immediate want of ready money. Still this is not universally the case. A vendor may sell his property to raise the money to pay for other estates purchased by him. Whenever this occurs, a safe indemnity may be obtained, as far as the property purchased by the vendor is concerned (supposing, of course, the title to be good), by conveying such property to trustees upon trust for the vendor, until the estate in the property sold by him to the purchaser becomes absolute, and upon the happening of that event, to convey the purchased property to the vendor. But in case the purchaser's estate is defeated by the happening of the contingency on which the executory limitation over in the property sold was to take place, to sell the purchased property, and thereout repay the purchase-money to the purchaser whose estate is thus defeated, with interest from that time.

An arrangement of this kind may also be usefully resorted to, where the vendor's circumstances will admit of it, if a safe title would in a short time be acquired under the Statute of Limitations. Thus, where it cannot be shown that the party who would have a claim is dead, and without issue, and there is every reason to believe that both circumstances have occurred, but still there is no positive evidence to prove those essential facts.

Indemnity to be binding must be sufficiently ample to insure the purchaser against loss.

But although an agreement to take an imperfect title with an indemnity will be binding, still this rule will only hold where the indemnity is sufficiently ample to insure the purchaser against loss. Hence, where one estate is to be exonerated from incumbrances by a security on another estate, the security must be co-extensive in

quantity of estate with the original charge, and the title to it must be such as will effectually indemnify the purchaser from loss; for, unless the vendor can insure a safe indemnity, the purchaser will be entitled to abandon his contract: (*Cassamajor* v. *Strode*, 1 Wils. Cha. Cas. 428; *Fildes* v. *Hooker*, 3 Mad. 193.)

Sometimes a purchaser is satisfied with a bond of indemnity.

Sometimes, where a vendor is in affluent circumstances, a vendee is satisfied with a bond conditioned for the repayment of the purchase-money and incidental expenses, in case the vendee should be lawfully evicted or disturbed in the possession of the purchased property, or should be damnified by any incumbrances lawfully charged upon it: (see the form in the Appendix.) In other cases, where the contingency depends upon one party surviving another, an indemnity is effected by insuring one of the lives, the vendor undertaking to defray the expenses of keeping up the policy, or by conveying or assigning sufficient property either to the purchaser or some one in trust for him to accomplish that purpose.

CHAPTER XI.

INDEMNITY BY ASSURANCE OF TITLE.

By assurance of title in the Law Property Assurance Society.

GREAT assistance will in future be afforded for the security of titles and the facilitating of the transfer of estates that have good holding titles, but are unmarketable by reason only of some such defects of proof or contingencies as I have previously described, in consequence of the recent establishment of the LAW PROPERTY ASSURANCE AND TRUST SOCIETY, which, among other objects of great utility, proposes to assure titles by way of guarantee. An estate so assured will not only be as valuable and marketable as any other, but it will, from the security so offered to a purchaser, command an increased price, probably more than equivalent to the cost of the assurance, so that it will deserve the consideration of solicitors and conveyancers whether they should not in all cases advise an assurance of the title, however good it may be, as the readiest means of securing for it the best price in the market, and making it more easily mortgageable. But Mr. Stewart's able Treatise on the subject of Assurance of Titles is no doubt well known to the reader, and I would refer them to it for further information.

I may add here that leaseholds and other terminable interests in property, and whether for a fixed or contingent term, are also proposed to be assured by this society, so as to give to such interests a value equal to freehold, or, probably, a greater value, for a freehold may deteriorate in value with time and changes, but a leasehold,

with the return of the purchase-money assured on the expiration of the lease, would be certain not to decline in value, but to the last would be worth the sum for which it is insured. In like manner the fines and renewal fees in copyholds and life-holds are to be provided for, and interests dependent upon life are also to be secured by the same society, which is now (January, 1850,) in course of being completely registered, and will probably have commenced its business before this volume goes into the hands of the reader. (*a*)

(*a*) I subjoin a portion of the Prospectus of the *Law Property Assurance and Trust Society*, which will better enable the reader to judge of the value of its operations.

"The Law Property Assurance and Trust Society is established for the assurance of property; its object being, by the application of the principle of assurance, to secure to all terminable and uncertain interests in property whatsoever, a value equivalent to, or even greater than, *freehold*, so that they shall be equally available with freeholds for the purposes of *sale* or of *mortgage*.

"It also purposes to embrace the *assurance of titles* that are good *holding titles* but not *marketable titles*, so as to make them marketable and mortgageable.

"Likewise, the *management of trusts*.

"The following are to be the branches of business:—

"1. *Assurance of Leaseholds*.—At present the purchaser of a leasehold loses both his purchase-money and his house or estate at the expiration of his lease. In the market it is slow of sale, and always commands less than its real value; and it is very difficult to procure a mortgage upon it. So, persons who take property on repairing leases, seldom provide a fund for the repairs required on quitting, and are often involved in ruin by the demand.

"The Law Property Assurance and Trust Society is designed to provide a remedy for this. On payment of a small annual premium, the society will secure to the leaseholder the repayment of his capital at the expiration of his lease, or the sum

CHAP. XI.

Of assurance of title.

Annexed is a scale of the charges for assurance of leaseholds, and other fixed terminable interests, with which I have been favoured by the editor of the LAW TIMES, with whom the design of this admirable society originated. It

---

required for repairs. Combined with such a policy of insurance, a leasehold will be as marketable and as mortgageable as any freehold, or even more so, for its value will be *certain* under any circumstances. To illustrate the working of this, it may be stated that, to assure the repayment of a purchase-money of 2,000*l.*, at the expiration of a lease of ninety-four years, the annual premium to be paid will be only 3*l.* 8*s.* 6*d.*

"2. *Assurance of Copyholds.*—Copyholders are frequently seriously embarrassed by the payment of fines, heriots, and admissions on deaths and renewals. The Law Property Assurance and Trust Society will insure the sums necessary to meet these.

"3. *Assurance of Lifeholds.*—All property held on lives it will assure in like manner, so that, on the dropping of the life, the sum required for renewal, or the value of the property lost, will be paid to the assurer.

"4. *Assurance against any Contingency.*—Property or life may be assured against any other contingency capable of being estimated, for the security of individuals and families.

"5. *The Assurance of Titles.*—It is estimated that there are many millions' worth of property in the United Kingdom unmarketable by reason of some technical defects in title, and which have yet good holding titles. These may all be made marketable and more valuable than other property by means of an assurance of title, which may be effected with great benefit to the community, and with large profits to the society.

"6. *The Management of Trusts.*—The experience of every lawyer, and almost of every individual, must have shown him the difficulty which is experienced in finding *responsible* trustees and executors, and everywhere are to be seen families ruined and creditors losing their debts through the defaults or dishonesty of trustees, besides the responsibilities and risk that attach to the office, making men daily more reluctant to undertake it. It is believed that the difficulty may be completely met by a respect-

is the non-participating scale, which does not entitle the assured to a participation of profits. The participating scale is somewhat higher. It will be useful to the reader in making his valuations for a purchase or mortgage.

---

able and responsible society undertaking the management of trusts, being paid by a small per-centage on the fund, as are the official assignees in bankruptcy, and that thousands would more gladly commit their properties to the care of such a society than to individuals of whose responsibility they cannot be assured. The moneys of the trust funds to be invested in government securities.

"7. *The Collection and Guarantee of Rents.*—This is to provide for landlords a more secure and satisfactory mode of collecting their rents than by the present machinery of house and estate agents, and to accompany it with a guarantee for the amount of his rent, in the nature of an insurance."

TABLE OF ANNUAL PREMIUMS to be paid to the LAW PROPERTY ASSURANCE SOCIETY to secure £100 absolutely at the end of any given number of years, without participation of profits, for the security of leaseholds, and other terminable interests in real or personal property.

No. of Years.	Annual Premium.			No. of Years.	Annual Premium.			No. of Years.	Annual Premium.			No. of Years.	Annual Premium.			No. of Years.	Annual Premium.			No. of Years.	Annual Premium.		
	£	s.	d.		£	s.	d.		£	s.	d.		£	s.	d.		£	s.	d.		£	s.	d.
100	0	3	3	85	0	5	3	70	0	8	8	55	0	14	8	40	1	6	6	25	2	14	10
99	0	3	4	84	0	5	5	69	0	8	11	54	0	15	3	39	1	7	8	24	2	18	1
98	0	3	6	83	0	5	8	68	0	9	3	53	0	15	10	38	1	8	11	23	3	1	7
97	0	3	7	82	0	5	10	67	0	9	7	52	0	16	5	37	1	10	2	22	3	5	6
96	0	3	9	81	0	6	0	66	0	9	11	51	0	17	0	36	1	11	7	21	3	9	9
95	0	3	10	80	0	6	2	65	0	10	3	50	0	17	9	35	1	13	1	20	3	14	5
94	0	3	11	79	0	6	5	64	0	10	8	49	0	18	5	34	1	14	7	19	3	19	7
93	0	4	1	78	0	6	8	63	0	11	0	48	0	19	2	33	1	16	4	18	4	5	5
92	0	4	3	77	0	6	10	62	0	11	5	47	0	19	11	32	1	18	1	17	4	11	11
91	0	4	4	76	0	7	1	61	0	11	10	46	1	0	8	31	2	0	0	16	4	19	2
90	0	4	6	75	0	7	4	60	0	12	3	45	1	1	7	30	2	2	0	15	5	7	6
89	0	4	8	74	0	7	7	59	0	12	8	44	1	2	5	29	2	4	2	14	5	17	0
88	0	4	9	73	0	7	11	58	0	13	2	43	1	3	4	28	2	6	7	13	6	8	0
87	0	4	11	72	0	8	1	57	0	13	8	42	1	4	4	27	2	9	1	12	7	0	11
86	0	5	1	71	0	8	4	56	0	14	2	41	1	5	5	26	2	11	10	11	7	16	1
																				10	8	14	6

CHAPTER XII.

OF THE PURCHASE DEEDS.

I. General Practical Observations.

Of the various modes of conveyance.

II. Practical Directions for Preparing the Conveyance.

1. *Of the Date.*
2. *Parties.*
3. *Recitals.*
4. *Testatum and granting clause.*
5. *Parcels and general words.*
6. *Exceptions.*
7. *Habendum.*
8. *Limitation of Uses.*
9. *Covenants.*

III. Assurances of Copyholds.

IV. Assignments of Leaseholds.

V. How Mixed Assurances should be made.

VI. How the Assurance should be prepared where a Mortgage and Purchase are contained in the same instrument.

VII. Disentailing Assurances.

VIII. Of the Execution and Attestation.

IX. Costs.

I. General Practical Observations.

Of the preparation of the purchase deeds.

When the title is approved of, and every doubt and difficulty cleared up, the next and conclusive step towards winding up the bargain is the pre-

CHAP. XII.
Purchase deeds.

paration of the purchase deeds and such other assurances as may be necessary for completing the purchase. This duty, as we have already seen, in the absence of an express stipulation to the contrary, devolves upon the purchaser's solicitor (vol. i. p. 40.)

Fair copy of draft of purchase to be submitted to vendor's solicitor.

When the latter has prepared the draft, he should forward a fair copy of it to the vendor's solicitor for his inspection; and if the latter approves of the same, the draft may then be engrossed. If any alterations or additions be made, it will then be for the purchaser's solicitor to see how far they are material to his client's interests; but whether so or not, no alteration should be afterwards made, however trivial such alterations may be, without acquainting the other party therewith previously to the engrossment of the deed.

Of the various modes of conveyance.

Purchaser entitled to select what mode of assurance he thinks proper.

With respect to the mode of conveyance to be adopted, this will rest with the purchaser, who is the proper person to pay for and tender the conveyance, and therefore has the best right to select what mode of assurance he may think proper. In ancient days the most usual mode of conveyance was by feoffment with livery of seisin, which has, in fact, continued in use even down to the present time. This mode of conveyance was in many cases considered the most eligible, as its operation was to clear all disseisins; and until recently it turned all other estates into mere rights. This result was, however, destroyed by the recent statute 3 & 4 Will. 4, c. 27. And now every tortious operation of a feoffment is taken away by the still more recent enactment of the 8 & 9 Vict. c. 106; so that feoffments having now no greater effect than an ordinary innocent mode of conveyance of the property, and the giving of livery of seisin being attended with

inconvenience and expense, that mode of conveyance is likely soon to grow out of use altogether. In fact, after the Statute of Uses had introduced the modes of assurance by lease and release, and also by appointment, feoffments became more rarely used, except in the three following instances:—1. Where the conveyance was made by a corporation, and this from the erroneous supposition that as corporations could not be seised to the use of others, they could not convey by a deed operating under the Statute of Uses, on which account the practice was to make them convey either by feoffment, or by a common law lease to be perfected by entry, and a release founded thereon. 2. To save the stamp duty of the lease for a year; but this the statute 55 Geo. 3, c. 184, put a stop to, by charging the same stamp duty on a feoffment, as if a lease for a year had been actually attached to it. 3. To acquire a tortious fee, which, as we have already seen, cannot now be done.

Release at common law.

Another mode of conveyance was by a release at common law, which may be classified under the five following heads, viz.:—1. By way of enlargement; as where a remainder-man releases to the particular tenant in possession. 2. By way of passing an estate; as where one coparcener or joint tenant releases to another coparcener or joint tenant. 3. By way of passing a right; as where a disseisee releases to a disseisor. 4. By way of extinguishment; as if any tenant for life makes a greater estate than he is warranted in granting, and I release to the grantee; or if the lord release to the tenant his seignorial rights. And 5. By way of entry and feoffment; as where a disseisor releases to one or two disseisees: (see Watk. Convey., edited by Morley, Coote, and Coventry.) In order, however, to give operation to a release, it was absolutely necessary that the releasee should be in actual possession of the

property; and hence the modern practice sprung up of creating a term of years by way of bargain and sale under the Statute of Uses, which that statute executed into the actual possession in the lessee without entry, who thereupon became capable of accepting a release of the property,—the two instruments forming, in point of fact, but one assurance; and though the bargain and sale purported to bear date before the release, both assurances were, in reality, executed at the same time, forming one conveyance under the general name of lease and release. A few years since, an act was passed for rendering a release as effectual for the conveyance of freehold estates as a lease and release by the same parties (4 & 5 Vict. c. 21), since which the lease for a year has been generally dispensed with in practice. It was, however, necessary that a release, to operate under this act, should be expressed to be made in pursuance of it, and the deed of release was, and is still, chargeable with the additional duty for which a lease of a year would have been liable : (sect. 1.) Another act was afterwards passed (7 & 8 Vict. c. 76), specifically to simplify the transfer of property; but it was found altogether so inadequate for the intended purpose, that it was deemed prudent to repeal it by an act passed in the session next immediately following: (8 & 9 Vict. c. 106.) By this last-mentioned enactment, all corporeal tenements and hereditaments were declared, as far as regarded the conveyance of the immediate freehold thereof, to be deemed to be in grant as well as in livery (sect. 2), so that lands of inheritance may now be conveyed by deed of grant only—a species of assurance that was formerly only applicable to incorporeal hereditaments, such as tithes, rent-charges, advowsons, or the like. For the time to come, therefore, there is no doubt that the conveyance by grant and release, being the most proper, will super-

sede conveyances by lease and release, and, with appointments, become the usual mode of passing real property. Still, the stamp duty for the lease for a year attached, as it previously did to the release. Another act was also passed in the same session (8 & 9 Vict. c. 119), which directs that, whenever a party to any deed made according to the forms set forth in the first schedule to that act, or to any other deed which shall be expressed to be made in pursuance of it, or referring thereto, shall employ in any such deed respecting any of the forms of words contained in column I. of the second schedule thereto annexed, and distinguished by any number therein, such deed shall be construed as if such party had inserted in such deed the form of words contained in column II. of the same schedule, and distinguished by the same number as is annexed to the form of words employed by such party; but that it should not be necessary in any such deed to insert any such number: (sect. 1.) It also enacts, that unless there was a special exception of the same, the deed should include the usual general words, "all houses," &c., and the reversion, &c., "and all the estate," &c.: (sect. 3.) But it still retained the duty of the lease for a year. At last, however, this unmeaning duty has been repealed by the recent statute (13 & 14 Vict. c. 97, s. 6), which also abolished the additional stamp duties upon feoffments and deeds of bargain and sale enrolled, a subject we shall enter more fully upon when we come to treat upon the stamp duties on conveyances.

General practical remarks.

The act (8 & 9 Vict. c. 119), does not seem to have met with any approbation amongst the Profession, and as the fifth section provides that a deed not taking effect under this act shall be as valid as if the act had not been made, the Profession seem almost universally to have availed themselves of this saving clause, and still employ

CHAP. XII. *Purchase deeds.*

the precedents formerly in use in preference to the scheduled forms set out in the act. Mr. Browell, indeed, in his explanatory notice to his edition of the recent Real Property Statutes, remarks (Browell's Real Property Statutes, p. 283,) that "great caution appears to be requisite in the use of this act, as the forms in its schedules are in strictness appropriate only to the most simple conveyances. Even," he continues to observe, "the common case of an appointment by a vendor seised to uses to bar dower to similar uses in favour of a purchaser seems one in which the act cannot with propriety be made available to any important extent, inasmuch as the form in the first schedule is that of a grant in fee-simple, and the covenants in the second schedule are framed with reference to an assurance of that simple description." He further remarks that "the acts give a particular efficacy to a particular form of words, and that the slightest deviation from that form will endanger the operation of the statute with reference to the covenant in which the mistake occurs, and such covenant may then, under the fifth section of the former, or the fourth of the latter act, be left to the very doubtful effect it may have by its own independent operation."

Other modes of assurance.

Other modes of common assurance were fines and recoveries, the two former of which, we have already seen, have been recently abolished. In addition to these may be added deeds of bargain and sale, and appointments in pursuance of powers under the Statutes of Uses and Exchanges,—modes of assurance that may still be employed; but a conveyance by way of appointment is the only one of them that is now often resorted to.

Bargain and sale enrolled.

A bargain and sale is defined to be a kind of real contract, founded upon some pecuniary or valuable consideration for the passing of real

estates by deed indented and enrolled, and deriving its operation and effect under the Statute of Uses. Before this statute, a contract for the sale of land raised a use, to convert which into a legal estate an actual conveyance was necessary; but that statute supplied the conveyance, and transferred the seisin of the vendor to the use of the purchaser, who having thus the seisin and the use, became seised of the legal estate without any other conveyance. The stat. 27 Hen. 8, c. 16, however, required this assurance to be enrolled in some of the courts at Westminster, or with the clerk of the peace of the county in which the lands are situate, within six *lunar* months from the time of the delivery (Hob. 140; 2 Ins. 673; Shep. Touch. 223), which period has been enlarged by the late act, 3 & 4 Will. 4, c. 74, with regard to enrolments in Chancery, to six calendar months. And although the time of enrolment may be thus postponed, yet, when completed, the deed takes effect from the time of delivery, and not from the time of enrolment: (2 Ins. 875; *Mulleny* v. *Jennings*, *ib.* 674; *Thomas* v. *Popham*, Dy. 218.) Care, however, must be taken to enrol the deed within the prescribed time, otherwise it will become inoperative.

Use cannot be limited to arise out of a bargain and sale.

As the Statute of Uses executes the use in the bargainee, and as a use cannot be limited on a use, all ulterior uses limited to arise out of the seisin of a bargainee, under a deed of bargain and sale, will necessarily be void as such, although they will still be good in equity as trusts; hence it follows, that an effectual power of appointment, capable of passing the legal estate, cannot be created by way of bargain and sale; and as, added to these inconveniences, the expense is greater than the ordinary conveyance by grant or release, because, in addition to the costs of enrolment, the same duty attaches as if a lease for a year was employed, deeds of bargain and sale

CHAP. XII.

Purchase deeds.

have not therefore often been used as a mode of assurance in modern times.

Distinction between ordinary bargains and sales, and bargains and sales under the Bankrupt Acts.

A bargain and sale was formerly the universal mode by which property was conveyed under a commission of bankruptcy; but that species of assurance, except as to copyholds, has been taken away by the recent enactments (1 & 2 Will. 4, c. 56, and 12 & 13 Vict. c. 106, s. 142,) which vest all the real estate of the bankrupt in his assignees, by virtue of their office. But bargains and sales under the Bankrupt Acts differed, both in nature and quality, from a bargain and sale under the Statute of Uses; the latter being a contract for money or money's worth, by the owner of the land for the alienation of his interest; which contract raised a use in favour of the purchaser, grounded on the seisin of the bargainor; which use was by the statute executed into possession the moment the deed was enrolled; but a bargain and sale under the Bankrupt Acts is merely the execution of a naked authority given to certain persons by the commission or fiat to dispose of the bankrupt's estate, and has no other title to the appellation of a bargain and sale, than that which it derives from the occurrence of the words "bargain and sell" in the statute which confers, and the instrument which executes the authority: (Hayes's Conv. 97, n. 6.)

Appointment.

Where a power of appointment is given, in addition to the ordinary modes of assurance, the donee of the power may convey by a single deed, and thus avoid the expense of the stamp for a lease for a year, which is not required in this mode of assurance. Its disadvantages are, that the conveyance may possibly fail of effect for non-compliance with the terms of the power, added to which, it is at least a doubtful point whether the covenants for title run with the land. This arises out of the principle that the purchaser coming in under the deed creating the power,

and not under the party exercising it, the former claims by a title paramount to, and independently of, the latter, and therefore for want of privity of estate the appointee cannot claim the benefit of covenants entered into with the donee of the power. Upon the same principle, the exercise of the power would have overreached judgments entered up subsequent to the deed creating such power, even where the appointee had notice of them; but this, as we have already seen, has been done away with by the recent act 1 & 2 Vict. c. 110, except as to purchasers who have no notice of the incumbrance.

Exchanges.

An exchange at common law is a mutual grant of equal interests, the one in consideration of the other: (Shep. Touch. 16; 2 Black. Com. 323.) In a conveyance of this kind no livery of seisin was required (Co. Litt. 506; Perk. sect. 285), the assurance being perfected by the entry of both parties, which, indeed, is indispensably necessary to render it valid; so that if either party die before this be done, the exchange will become inoperative: (see Butl. note to Co. Litt. 276.)

Requisites to the validity of an exchange.

An exchange can only be made betwixt two parties, though the number of persons of which such parties consist is immaterial: (3 Wils. 483.) The foundation of the assurance at common law, is a mutuality of interest, and an implied warranty, which engenders the right of entry in the case of eviction; the latter is, however, now destroyed by the recent statute of 8 & 9 Vict. c. 106, by the 4th section of which it is enacted, that an exchange made after the 1st of October, 1845, of any tenements or hereditaments, shall not imply any condition in law; but as it still leaves the equitable doctrine untouched, by which, after mutual conveyances, one estate may be rendered liable to the incumbrances of the other, it has been justly remarked that a greater degree of practical inconvenience arises out of this equity

than any which formerly existed from the pre-existing form of exchange, which had in point of fact nearly become obsolete: (Browell's Real Property Stat. 276.) In an exchange it was not formerly necessary that it should have been made by deed, unless the subject of it lay in grant, or was situate in different counties; in other cases a mere note in writing would have been sufficient: (Co. Litt. 50, 51.) But now the statute of 8 & 9 Vict. c. 106, enacts, that an exchange of any tenements or hereditaments, not being copyholds, made after the 31st of October, 1845, shall be void at law, unless made by deed: (sect. 2.)

Exchange, a mode of assurance not now usually resorted to.

This mode of assurance has not, however, been often resorted to in modern times, the object of it having usually been effected by mutual releases, the one being expressed to be made in consideration of the other (see the form in the Appendix, No. XXVIII.), instead of making each a pecuniary consideration for the whole value; not only because it more accurately describes the transaction, but what is often highly important, considering the present high scale of stamp duties, it saves the *ad valorem* duty which would otherwise attach on each conveyance, and by the Stamp Act (55 Geo. 3, c. 184), if the sum paid for equality of exchange is under 300*l.* the common deed-stamp is sufficient; but if it amounts to or exceeds that sum, an *ad valorem* duty, the same as on other purchases, will become payable.

Disentailing deeds and acknowledgments of married women.

We have already seen (*ante*, vol. i. 170, *et seq.*) that a tenant in tail may bar the entail and convey the entailed property by deed enrolled; and as the act empowering him to do so does not prescribe any particular mode of assurance, the conveyance may be made by any existing mode of assurance by which property may be conveyed from one party to another. As the deed, however, requires enrolment, where a power of

appointment is intended to be reserved, or uses are intended to arise out of the seisin of the party to whom the property is conveyed by the disentailing deed, in order to prevent the possibility of the legal estate vesting in the grantee or releasee, it has become the more usual practice to omit the words "bargain and sell" in the conveyance, using only the words "grant and release," or "grant, release, and confirm." But notwithstanding a deed of bargain and sale had the disadvantage above alluded to, still, where the sole object of the conveyance was to convey an estate immediately to a purchaser, who was indifferent as to reserving a power of appointment, and as it took effect without a lease for a year, the expense of enrolment of that instrument was saved, as the lease for a year, as well as the release, required enrolment. But now a lease for a year is disused, so that at present a bargain and sale has no advantage over the modern grant and release; but a deed of bargain and sale has this inconvenience, viz. that it has been doubted whether, if a disentailing deed by this mode of assurance goes beyond the mere purpose of effecting a sale to a purchaser—as if it were made for the purpose of resettling the estate, or converting the entail into an estate in fee-simple,—a 5*l.* stamp may not be necessary; it seems, upon the whole, therefore, that the assurance by grant and release under the recent enactments is the most eligible mode for barring the entails at the present day. (See the forms in the Appendix, Nos. XXII., XXIV., XXV., XXVI., XXVII., XXVIII.)

When distinct deed will be necessary.

It not unfrequently happens that a tenant in tail, selling part of his property, is desirous of barring the entail in the residue which he intends to retain the possession of. In a case of this kind, it will be advisable to bar the entail by a distinct deed from that by which the property is

CHAP. XII.

Purchase deeds.

conveyed to the purchaser (see the form in the Appendix, No. XXII.), a course which, indeed, is always to be recommended where the deed of conveyance is likely to run to any considerable length, as the whole conveyance must be enrolled at the vendor's expense; for the same reason that he was obliged to bear the expenses of a fine and recovery, when either of those assurances was necessary for perfecting his title.

asehold
d copy-
lds.

Leasehold property passes by deed of assignment, and the legal estate of copyholds by entry on the court rolls; but in addition to this, there is usually a deed declaring the uses of the surrender: (see the form in the Appendix, No. XXIX.) Freehold, leasehold, and copyhold estates may, however, be all conveyed by the same deed (see the form in the Appendix, No. XXXV), a subject I shall enter upon more fully when I come to treat of assurances relating to leasehold and copyhold property.

SECTION II.

PRACTICAL DIRECTIONS FOR PREPARING THE CONVEYANCE.

Of the date.

THE conveyance should always commence with the date, although, in point of fact, it will be equally good if it has no date at all, or an impossible date, as the 30th of February, the 31st of November, or the like, if the time of delivery can be proved; for a deed takes effect from the time of its delivery, and not from the day on which it is dated: (Co. Litt. 46; Dy. 28; 2 Black. Com. 304; *House* v. *Laxton*, Cro. Eliz. 890; *Stone* v. *Bayle*, 3 Lev. 348; *Doe* v. *Day*, 10 East, 427.) When conveyances by lease and release were in use, the practice was to date the bargain and sale for a year on the day preceding the release, unless the latter was executed on a Monday, in which case the bargain and sale was dated on the Saturday, leaving the interval of a day, in order that it might not appear to have been executed on a Sunday; still, the latter caution was unnecessary, as the statute for the better observance of the Lord's-day (29 Car. 2, c. 7) applies only to process and proceedings of the courts, and dealings in the course of trade, and not to private transactions of individuals as between themselves by way of conveyance. Sometimes the lease and release are, from inadvertence, dated on the same day; but even then, the conveyance has been held equally good by giving priority to the lease for a year: (*Taylor* v. *Horde*, 1 Bur. 103, 107.) Mr. Preston has also expressed an opinion that, "supposing it should appear in

CHAP. XII.

Practical directions or preparing the conveyance.

evidence that the lease and release were both executed on the same day, but the release was executed before the lease for a year, it is highly probable that under these circumstances the court would support a title derived under these instruments. The lease and release," he continues to observe, "are parts of the same assurance, and the court might well decide that the execution of the several instruments was to be considered as one entire transaction, and that the law gives priority in its construction to the execution of the lease for a year:" (2 Prest. Con. 364; see also *Cromwell's case*, 2 Rep. 74, b; *Ferrers* v. *Fermor*, Cro. Jac. 643; *Herring* v. *Brown*, 2 Show. 185; *Selwyn* v. *Selwyn*, 3 Bur. 113.) The same learned writer also observes, that in some cases there may be a mistake in dating the lease and release, by giving a priority of date to the release instead of the lease. Under these circumstances, he considers the recital in the release would in all probability be the foundation for averring the prior delivery of the lease for a year, thus making it a good and sufficient groundwork for the release, or the recital would be evidence of a separate, distinct, and antecedent lease; and the rule of law, being (as we have already seen), that a party may admit a deed as dated on one day, and first delivered on another: (*House* v. *Laxton*, Cro. Eliz. 890; *Stone* v. *Bayle*, 3 Lev. 348; *Lord Say and Sele's case*, 10 Mod. 40; *Barker* v. *Keate*, Freem. 250.) Questions of this kind are, however, now become less important than formerly, when conveyances by lease and release were the most common modes of assurance, but which, now that the lease for a year may be dispensed with, is seldom resorted to.

Indenture.

Formerly, when deeds were more concisely drawn than has been the modern practice, it was usual to write both parts on the same piece of

parchment, with some letters of the alphabet written between them, through which the parchment was cut, either in a straight or indented line, so as to leave half the letters on one part and half on the other. The practice of the present day is merely to cut the parchment in a waving line, without cutting through any letters at all, so that now the indentation serves very little other purpose than giving name to the instrument; nor was it necessary that the deed should have been indented at the time of delivery, for if done afterwards, it would have been equally valid. But until this was done, it was held to be no indenture, or capable of operating as such. The act of the 7 & 8 Vict. c. 76, already alluded to (*ante*, p. 156), did away with the necessity of indenting a deed, and did not even require that an instrument, to have its operation, should be so entitled. This act is now repealed by stat. 8 & 9 Vict. c. 106. under which indentures have regained their ancient and long-established name, with this additional advantage, that no actual indentation is now requisite to entitle them to support that title; so that, if expressed to be an indenture, the instrument, whether indented or not, will now be received in evidence as such: (1 Hughes Pract. Mort. 53.)

Indenture a more powerful instrument than a deed-poll.

An indenture, it must also be remembered, is a more powerful instrument than a deed-poll, for all the parts of an indenture make but one deed (Shep. Touch. 50; Plow. 134; 26 Hen. 6, cc. 24, 25; Litt. S. 370; 6 Hen. 6, c. 35; 35 Hen. 6, c. 34), and every part is of as great force as all the parts put together, working by estoppel, and barring and concluding every party executing it (Plow. 421, 434); whereas a deed-poll is but of one part, and will be expounded to be the sole deed of the party making it, and the words therein contained will be construed to be binding on him

CHAP. XII.

Practical directions for preparing the conveyance.

only, and therefore cannot create an estoppel in point of estate: (Shep. Touch. 53.)

Of the names and descriptions of the parties.

With respect to the parties to a deed, they should be described by their proper Christian and surname, place of abode, and additions; or, in the case of a corporate body, by the name of incorporation; sometimes also it will be necessary to state the particular situation in which they stand to the conveyance; as "trustee, heir-at-law, executor," &c.

Order in which the parties should be placed.

The order in which the parties should be placed in the deed with regard to their estates and interests will require some attention, though an error in this respect will not invalidate the assurance. The correct way of arranging the parties is to place the granting parties first: and amongst them, those having legal estates must have the priority; next, those having equitable or beneficial interests; and after them, the parties to whom the legal estate is to be conveyed; and then those taking equitable estates, if the latter are to be made parties to the deed. Where persons assigning or surrendering chattel interests are parties, they are placed next after the persons having equitable estates of freehold. Where husband and wife are the conveying parties, they are usually coupled together in the conveyance; as John Smith, of, &c. and Ann, his wife, &c. mentioning only the Christian name of the wife.

Whether parties can grant or take any deed who are not mentioned in the premises.

The general rule that no one can grant by deed, or take an immediate estate under it, without being named as a party, does not extend to persons taking by way of use, or the benefit of a trust, or any estate by way of remainder; so that it is not necessary, where such are intended to take in that way, to make them parties to the deed (*Samme's case*, 13 Rep. 55; *Gilby* v. *Copley*, 3 Lev. 138); and now, under the recent statute, 8 & 9 Vict. c. 106, parties not named in the

Practical directions for preparing the conveyance.

premises of a deed may take immediately under it: (sect. 5.)

When a vendor who holds an estate under the usual dower uses conveys to a purchaser, in strict technical propriety the dower trustee ought to join, upon the principle that as the fee-simple is professed to be conveyed, all the estates forming component parts of that fee should be included in such conveyance; still it is a matter of no real importance, the trustee's estate being no more than a remainder for the life of the vendor expectant on the forfeiture of his life estate, and it is understood that the late Mr. Butler has expressed an opinion that a purchaser cannot insist on the concurrence of the dower trustee, unless the power be either suspended or destroyed.

All estates forming a component part of the fee should be included in the conveyance.

Persons also are sometimes made parties, not actually for the purpose of conveying anything, but merely for concurring in the conveyance, either because their consent is essential to the validity of the deed, or because they stand in such a relation to the transaction that it is desirable there should be recorded evidence of their knowledge of it. Hence, for example, where a person has devised lands to trustees, upon trust to sell, and pay debts and legacies, the heir-at-law and legatees are frequently made parties to the conveyance to the purchasers, although in legal strictness they are not necessary parties to such conveyance. In case of sales under powers of sale contained in mortgage assurances, it is unnecessary to make the mortgagor a party to the conveyance; although, indeed, it was at one time doubted whether a mortgagee could have effected a sale so as to have been binding on the equity of redemption without the mortgagor's concurrence (see 1 Pow. Mort. 14); but these doubts have been long since set at rest, and the validity of the exercise of powers of this kind so firmly established, that a purchaser under a power of

When persons are made parties whose concurrence is not essential.

CHAP. XII.

Practical directions for preparing the conveyance.

sale contained in a mortgage deed, cannot insist upon the mortgagor's being made a party to the conveyance, even where there is an express covenant on his part to concur in the sale: (*Clay* v. *Sharpe*, 18 Ves. 436; *Corder* v. *Morgan*, *ib.* 344.) And it seems that if a purchaser should refuse a specific performance without such concurrence, that it would be decreed against him with costs: (Coote, Mort. 503; 1 Hughes, Pract. Mort. 67.)

Concurrence of *cestui que trust* unnecessary where lands are directed to be sold by trustees, where the latter are authorized to give receipts.

Nor will a concurrence of *cestuis que trust* be necessary where lands are directed to be sold by trustees, and the purchase-moneys to be applied for the benefit of such *cestuis que trust*, if the deed or will creating the trust contains a clause that the trustees' receipts shall be a sufficient discharge to purchasers; but if this clause be omitted, all the *cestuis que trust* should concur in the conveyance.

When the vendor's personal representatives will become necessary parties.

When a vendor dies between the time of signing the contract and the completion of the purchase, as the purchase money will then go to his executors, and form part of his assets (*Sykes* v. *Listor*, 5 Vin. Abr. 451; *Baden* v. *The Earl of Pembroke*, 2 Vern. 213; *Bubb's case*, 2 Freem. 38; *Smith* v. *Hibbard*, 2 Dick. 712; *Foley* v. *Perceval*, 4 Bro. C. C. 419), the executors or administrators must be parties to the conveyance, to release their claims and acknowledge the receipt of the purchase-money, as must also the heir-at-law, to convey the legal estate in the property, which still remains in him: (see the form, *infra.*)

Bankrupt.

A bankrupt is also made a party to the conveyance of his estate, to obviate any difficulty to which a purchaser might otherwise be subjected in maintaining or proving the title: (see the form, *infra.*) By a late Bankrupt Act also (6 Geo. 4, c. 16, s. 28; *Ex parte Thomas*, 1 Moo. & M. 64), the Lord Chancellor is em-

Practical directions for preparing the conveyance.

powered, upon petition, either by the assignees or a purchaser, to direct the bankrupt to join in the conveyance; and in case of his refusal, the order of the court will have the same effect as if he had actually concurred. And by statute 12 & 13 Vict. c. 106, which repeals the statute 6 Geo. 4, c. 16, the court, upon the application of the assignees, or of any purchaser from them of any part of the bankrupt's estate, if such bankrupt shall not try the validity of the adjudication, or if there shall have been a verdict at law establishing its validity, may order the bankrupt to join in any conveyance of such estate or any part thereof; and if he shall not execute such conveyance within the time directed by such order, such bankrupt, and all persons claiming under him, shall be estopped from objecting to the validity of such conveyance; and all estate, right, or title which such bankrupt had therein shall be as effectually barred by such order, as if such conveyance had been executed by him: (sect. 148.)

Where the consent of any particular person is required he will become a necessary party.

So, where the consent of any person is required by the terms of a power, or a trust, or, as in the case of a protector under a disentailing deed, he should be made a party to the deed requiring his concurrence, which, though not actually necessary, will effectually prevent any questions from arising as to whether a prospective or retrospective consent is sufficient: (Conveyancer's Recital Book, 20.)

Mortgagee should be party to conveyance of equity of redemption, or have notice of such conveyance.

In the conveyance of an equity of redemption, the mortgagee should either be made a party, or at any rate have notice of the purchase; because, if he were to advance any further sum without having had either express or implied notice of it, such further advance would be a valid charge on the estate in the hands of a purchaser: (*Shepherd* v. *Titley*, 2 Atk. 348, 349.)

Recitals, how far binding on

It sometimes happens, that when the contents of a deed are extensive and complicated, persons

CHAP. XII.

Practical directions for preparing the conveyance.

the parties to a deed.

object to be parties, from an apprehension that they would be considered as much bound by assertions in the recitals, as by the effect of the deed; but it seems that, generally speaking, none of the parties would be bound further than they appear from the general import of the deed to have agreed to be bound, and that the general expressions, *and it is hereby declared and agreed by and between the said parties, &c.* would be considered as applying to those only who are immediately interested in such agreement. But to remove all doubt about the matter, a general clause may be inserted, referring each distinct part of the deed to the person particularly interested in it.

3. *Of the Recitals.*

Recitals must depend upon the state of the title.

The recitals must ever depend upon the particular circumstances and state of the title, so that it is scarcely possible to lay down any precise rules upon the subject. As a general maxim, the best course to follow is to avoid loading the conveyance with unnecessary and lengthy recitals, but at the same time never to omit the recital of any fact or assurance that may serve to develop the relationship in which the conveying parties stand to each other with respect to the subject-matter of conveyance. If the deeds that are to be delivered over to the purchaser are of themselves sufficient to enable him to defend his title, no recitals are essential to his security; in such case, therefore, the recitals may be very short, or may be omitted altogether. If, on the other hand, his title depends upon circumstances which do not appear on the face of the deeds delivered to him, these circumstances should be all set forth in the recitals.

Where the property is conveyed under a power of

If the conveyance is made by appointment and release under the common dower uses, the deed of conveyance, by which the power is created,

should always be recited (see the form, *infra*, No. I., clause 2); as, indeed, it should in all cases where a power of appointment is exercised. Sometimes the instrument creating the power is recited in the *testatum* clause; as, "in consideration of, &c. the said A. B. by virtue and in exercise of a power, &c. limited to him by a certain indenture" (stating the assurance, date, names of parties, &c.) "and of every other power, &c. doth by these presents appoint," &c. In the recital of powers, it is unnecessary to recite anything further than what shows that the exercise then intended to be made of the power is warranted by it. So. where a power is intended to be exercised, it will be unnecessary to recite the uses which are limited to take effect in default of appointment. If there be a power of appointment in two persons jointly, and in default thereof, a similar power to the survivor, and such last-mentioned power afterwards vests in such survivor, who is desirous of exercising it, the former power should be recited, as also that no joint appointment was ever made, and the fact of the death of the other party, by means of which the latter power became vested in the survivor: (see Convey. Recital Book, 43.)

Appointment.

Where the vendor is seised absolutely in fee-simple, and conveys by lease and release, it is often sufficient to recite merely that he is so seised, and the agreement to purchase; but where the legal estate is outstanding, or the property subject to a mortgage or other incumbrance, then it will be necessary by the recitals to show all these facts, and the relation in which the conveying parties stand to each other respecting them.

Where the vendor is seised in fee.

In all conveyances of trust property, if there is a power for the trustees to give receipts, it will be sufficient to recite the creation of the trust, and the power to give such receipts, and

Conveyances of trust-property.

CHAP. XII.

Practical directions for preparing the conveyance.

there will be no occasion to recite the trusts of the purchase-money. But where the trustees are not invested with such a power, and the circumstances of the case make it incumbent on the purchaser to see to the application of the proceeds of the sale, it will be proper to disclose the trusts, and the persons beneficially interested in the purchase-money ought to be made parties to the deed for the purpose of releasing their claims on the property. In all cases, also, where trustees convey, it will be proper to set forth so much as justifies them in so doing. Thus, for example, if A. be originally a trustee for B., and C. afterwards, by any means, becomes entitled to the benefit of this trust, the manner in which C. became so entitled should be recited in the deed.

Order in which the recitals should be made.

Generally speaking, the different documents should be recited according to the priority of their respective dates, and other facts and transactions according to the priority of time at which the same occurred; but where there are several distinct transactions to be stated, one independently of the other, it is sometimes better to go through the whole recital of one transaction, before the recital of the other is entered upon at all.

When deeds should be recited as principal, and when as recited deeds.

It is better to recite deeds, as principal deeds, if the party has the original deeds and can depend upon the recital of them; but if he neither has the deeds, nor can depend upon the recitals, then they should be recited as recited deeds.

Distinction between the recital of deed, and of the recital of its effect.

There is also, it must be kept in mind, a difference between the recital of a deed and the recital of the effect of that deed: in the former instance the language of the deed should be rigidly adhered to; in the latter it may be varied. Some deeds, however, from their very nature and operation, require to be formally recited, and not simply the result stated; as where the reciting

deed is a conveyance to uses to bar dower, when it would be inaccurate (though often done) merely to state the result, and say that the lands were limited to the usual uses to prevent dower, because there are several minute forms adapted to, and employed for, this purpose, particularly as to the mode of executing the power of appointment; and no one, from such general expressions, would know what the exact uses were. But where the direct result of a former deed or instrument is one or more simple fact or facts, which contain within themselves all their own consequences, without looking further into the language or frame of that instrument, it may then be proper to state the result without the instrument. Thus, where a man is seised in fee, it will be sufficient to state that fact without stating how he became so entitled: (see Conveyancer's Recital Book, p. 37.)

When strict technical words have not been employed it will be better to state their effect than to recite the words.

It sometimes happens that strict technical words have not been employed to create the estate, and this frequently happens in the case of entails created by will. Whenever this occurs, it will be more prudent to state the result; as that the testator devised the premises in question to A. for life, with remainder to his first and other sons in tail, instead of inserting the actual terms of the devise, where such terms can possibly be construed to have a doubtful or equivocal import; for, in the former case, the parties to the deed will be estopped from denying the estate devised to be other than that recited; but if the words themselves were set out in the recital, then the parties would be equally estopped from denying the legal import of the recited words (*Rountree* v. *Jacob*, 2 Taunt. 141; *Baker* v. *Dewey*, 1 B. & C. 704), which, to say the least of it, might cause doubts and questions which could never have arisen if the course above suggested had been resorted to.

CHAP. XII.

Practical directions for preparing the conveyance.

Description of parties.

In describing the parties to the recited deed, it is usual only to give their additions, as esquire, gentleman, &c. omitting their residence; it is also a common practice to omit the addition, and simply state that the party is described in the recited document: as John Smith therein described of the one part, and John Styles therein also described of the other part. Where several parties convey in separate and distinct characters, their relationship should, however, be distinctly pointed out by the recitals. For example: suppose the necessary parties to the conveyance are the heir and executor of a deceased mortgagee, and the owner of the equity of redemption to whom the estate has been limited to the usual dower uses, and who has mortgaged the property to the deceased mortgagee. In this case, after naming them as the parties, it will be necessary to recite—1. The conveyance to the owner to the dower uses. 2. The conveyance to the mortgagee. 3. The death and will of the mortgagee and the probate of his will. 4. The contract for sale to the purchaser. And, 5. The money then due on the mortgage: (see the form, *infra.*)

Recitals to identify the parcels.

Sometimes the recitals in previous deeds are inserted, for the purpose of identifying the parcels, and the course through which they have been transmitted, which is often important to disclose facts not apparent on the title deeds themselves, as in the case of property descending from ancestor to heir. This, however, may often be done shortly, by being superadded to the description of the parcels; as, "which said messuage, &c. were formerly the inheritance of A. B. who died intestate, and descended from him to R. B. his nephew and heir-at-law, who devised the same to," &c.; or, "all which said hereditaments and premises were formerly the inheritance of A. B. to whom the said premises were conveyed by

Practical directions for preparing the conveyance.

indentures of lease and release bearing date, &c. and made between, &c. and the said A. B. &c. and the said A. B. by indentures of lease and release bearing date, &c. conveyed the same," &c.

In the assignment of terms of years, either to a purchaser beneficially or to a trustee in trust to attend the inheritance, it has long been a common practice to omit the intermediate assignments, and confine the recitals to the creation of the term and the last assignment, merely reciting that by a certain indenture made between the parties (*naming them*), the term was created, which by divers mesne assignments, and ultimately by the last and then existing assignment, became and is still vested in the assignor: (*see the form, infra.*)

Assignment of terms

It is a common practice, whenever the date of an assurance or a matter of fact is stated, to employ the words "on or about," in order to guard against any error as to the particular day referred to; as also to recite that the assurance is made, "or expressed to be made," between the parties named. The latter, Mr. Coventry treats as absurd, conceiving that those expressions imply that a deed can be made by other persons than those named in it. Mr. Jarman, however, seems to take a more correct view of the case, and observes that the words "expressed to be made" are obviously designed to provide against the possible event of the recited deed not being executed by all the persons who are professed to be parties to it; and in such case their insertion seems to be necessary to complete accuracy, since a deed cannot correctly be described to be made by a person who does not execute it. They would of course particularly approximate when any of the professed parties to the deed refuse to execute it, as where a trustee disclaims the trust estate intended to be vested in him. The deed of disclaimer reciting the trust deed should state it as

As to the date of recited documents.

CHAP. XII.

Practical directions for preparing the conveyance.

a deed expressed to be made between the intended grantors and the trustee who refuses the acceptance of the estate intended to be invested in him.

Recitals no estoppel except as between parties to the deed.

Recitals, although operating by way of estoppel to the parties to the deed (*Doe* v. *Sherlock*, 1 Fox & Smith, 78; *Doe* v. *Saunders*, *ib.* 28; *Rees* v. *Lloyd*, Wightw. 123), do not afford any evidence as against other persons (3 Prest. Abs. 8); still, where they have been supported by long uninterrupted possession, and relate to facts which have been within the knowledge of the parties, especially if those facts are stated with the circumstance of time, place, &c. they may be often relied on, though no general rule ever has, or can be, laid down on the subject.

Recital of lease for a year.

In conveyances by lease and release, it was always usual to recite the lease for a year, which was done at the end of the granting clause, and though not absolutely necessary, was thus far important, that where the lease for a year was lost, it often afforded satisfactory proof that such lease was actually made, and the release duly founded upon it. Hence the loss of a lease for a year that was recited in the release, which was a conveyance to the tenant to the *præcipe*, was held to be supplied by the statute 14 Geo. 2, c. 2, and that it was not unreasonable to presume, as the lease was recited in the release, and the parties were thus apprised of the necessity of a lease, that there was a lease: (*Holmes* v. *Ailsbie*, 1 M. & C. 551; see also *Skipwith* v. *Shirley*, 11 Ves. 64; *Ward* v. *Garnons*, 17 *ib.* 134.) In Ireland, it has been held sufficient simply to recite the lease for a year, no such lease being ever made (9 Geo. 2, c. 5, s. 6; 1 Geo. 3, c. 3); and the statute of 4 & 5 Vict. c. 21, under which a lease for a year may now be dispensed with, enacts, that the recital or mention of a lease for a year in a release executed before the passing

Practical directions for preparing the conveyance.

of that act, shall be evidence of the execution of such lease for a year. In order, however, that a release should be effectual under that act, it was requisite that it should appear on the face of it to have been made in pursuance thereof. This was sometimes done at the very outset of the deed, viz.: "This indenture made in pursuance of an act;" at other times the reference to the act was made in the *testatum* clause; as, "the said A. B. doth by these presents, made in pursuance of an act for rendering a release as effectual for the conveyance of freehold estates as a lease and release by the same parties," &c. Conveyances under the subsequent act of 8 & 9 Vict. c. 106, do not require any reference to that or any other act. Some gentlemen, however, still refer to the act of 4 & 5 Vict.; and others, adopting a kind of middle course, state the deed to be made "as well in pursuance as independently of that act," &c. But the latter course, being adapted to the existing uncertainty in the law, will, it is apprehended, soon grow out of use.

The testatum and granting clause.

It is usual to express in the *testatum* clause the consideration for which the conveyance is made, the mode of expressing which must be governed by circumstances, so as to adapt the language of the assurance to the facts and intention of the parties. By the rules of common law, no consideration is necessary to the validity of any conveyance, excepting a bargain and sale. The Stamp Acts, however, require the full consideration to be set out in the deed; but, independently of this, it would have been always advisable to insert it, not only for the purpose of showing that the purchase-money has been paid, as also to rebut the presumption of a resulting use or trust, but also to disclose on the very face of the instrument that it was not voluntary, so as to be fraudulent against creditors or subsequent purchasers. For these reasons, therefore, it is now

CHAP. XII.

Practical directions for preparing the conveyance.

the universal practice to express the payment of the consideration-money in the body of the deed, as well as in the memorandum of receipt indorsed. At law such an acknowledgment in the body of the deed is conclusive; because, a party who executes a deed is, as we have already seen, estopped from saying that the facts stated are not truly set forth; but the receipt indorsed has not this operation, because, not being under seal, it is incapable of working an estoppel: (*Lampon* v. *Corke*, 5 B. & Ald. 606; 1 Dow. & Ry. 211.) Consequently, if the consideration was not expressed to be paid in the deed, the vendor would not have been estopped by its being so expressed in the indorsed memorandum. But in equity, neither the acknowledgment of the receipt of the purchase-money in the body of the deed, nor in the indorsed memorandum, will preclude the vendor from showing that the money has not been so paid: (*Coppin* v. *Coppin*, 2 P. Wms. 284; *Macreth* v. *Symons*, 15 Ves. 337; *Hughes* v. *Kearney*, 1 Sch. & Lef. 132; *Grant* v. *Shallis*, 2 Ves. & B. 306.) But, for all this, the indorsement and signature of receipt of the purchase-money should never be omitted; for, although not conclusive evidence of such payment, its absence is implied notice that it has not been made, and that a lien in equity has attached on the lands in consequence: (2 Prest. Conv. 42; and see *ante*, vol. i. p. 98, *et seq.*) No consideration being necessary to pass an estate at common law, though it is to raise a use, a practice arose of omitting even a nominal consideration in a disentailing deed, where it was intended to settle the property through the medium of the Statute of Uses, lest the enrolment should constitute it a bargain and sale enrolled, and to state merely that the assurance is for the purpose of barring the entail, &c.: (see the form, *infra*, No. XXII.)

How the consideration

When a full and valuable consideration is paid,

Practical directions for preparing the conveyance.

the receipt is usually expressed more fully than where the consideration is merely nominal: thus, for example, the consideration-clause, where the conveyance is made by the vendor and his dower trustee, usually states "that in consideration of £ sterling paid by the said vendor to the said purchaser at the time of the execution hereof, the receipt of which the said vendor hereby acknowledges, and therefrom doth, by these presents, release the said purchaser, his heirs, executors, administrators, and assigns for ever; and also in consideration of 10*s.* at the same time paid by the said purchaser to the said dower trustee, the receipt whereof is hereby acknowledged," &c. This form is a shorter one than has been generally adopted for this purpose; still it seems that the more concisely (provided it be done correctly) the *testatum* clause can be penned, the more clearly will it tend to disclose the objects effected by it.

should be expressed in the deed.

Where the conveyance is by appointment and release.

The above clause supposes the conveyance to have been by release; for if made by appointment and release, it will be requisite that a *testatum* should precede the one now given, by which, after setting forth the consideration of the purchase-money in the terms before mentioned, the vendor should appoint that the premises shall remain to the uses thereinafter declared; and the second *testatum* should merely express a nominal pecuniary consideration to be paid by the purchaser to the vendor and dower trustee (if the latter should be made a party), in consideration of which, &c.: (see the form, *infra*, No. I., clauses 5, 6.)

Operative words.

The usual operative words in a deed of release to a purchaser are "*grant, bargain, sell, alien, release, ratify* and *confirm*." The word "*grant*" in a conveyance of corporeal hereditaments was considered to apply peculiarly to the *estate* of the grantor, and the *reversion* of the land expectant

CHAP. XII.

Practical directions for preparing the conveyance.

on the determination of the bargain and sale for a year, or other existing particular estate, where there was no such privity between the grantor and grantee as was requisite to give effect to the deed of release; also to title deeds, rights of common, and other incorporeal hereditaments appurtenant to the land: (Shep. Touch. 238, 239.) But as corporeal hereditaments are now made to lie in grant, as well as in livery, the word "*grant*" will be strictly applicable to conveyances of every description of landed property, without the addition of any other operative words, and will now form an essential term in every conveyance of real property, and should, therefore, be inserted in conveyances by trustees, or other parties taking dry legal estates, as well as by those taking beneficial interests. The practice in former times certainly was to advise trustees, and persons acting in that character, as executors, &c. not to convey by the word "*grant*," upon the erroneous supposition that it raised an implied covenant in the granting party (Park, French edit. 26; Noy, Max. 261, 9th edit.; *Nokes's case*, 4 Rep. 80; and see Butl. note to Co. Litt. 425), which notion, even if it had been well founded, has been nullified by the recent statute 8 & 9 Vict. c. 108, which expressly enacts, that no implied covenant shall arise from either the word "*give*," or "*grant;*" consequently, a trustee has no right any longer to decline to convey under those terms. The words "*bargain* and *sell*" were used for the purpose of enabling the purchaser to give effect to the conveyance as a bargain and sale by enrolment (without which the latter assurance has no operation), (Moor, 34; Godb. 7; Cro. Jac. 210), should it have been deemed expedient so to do, by reason of the lease for a year having been omitted, or the like; but now, as a lease for a year is no longer necessary, the words "*bargain*

Words "*give*" or "*grant*" will raise no implied covenant.

CHAP. XII.

Practical directions for preparing the conveyance.

are "*surrender and yield up*," which will have the effect of merging such lesser, in the greater estate. Where the conveyance is by appointment, the operative words are either "*direct, limit, or appoint*," or simply "*appoint*," but other terms will have the same operation. In conveyances by appointment and release the words "*appoint*" and "*release*" are sometimes mixed together in the operative part of the deed, but this is always irregular, and sometimes materially wrong.

Where there are several parties, they should convey according to their respective interests.

Where there are several conveying parties, they must convey according to their respective interests. For example, in the case before instanced, of a sale by an heir-at-law and executors of a deceased mortgagee, under a power of sale contained in the mortgage deed, it should be expressed, that in consideration of the purchase money, setting out the amount, paid by the purchaser to the executors, and of a nominal pecuniary consideration paid by such purchaser to the heir of the mortgagee, such heir, in respect only of his legal estate as heir-at-law of the mortgagee, should "*grant, release and convey ;*" the executors should "*release and quit claim ;*" and if the owner of the equity of redemption is a party, he should "*grant, release, ratify and confirm :*" (see the form, *infra.*)

Trustees.

In conveyances by a trustee, it is also a common practice to qualify his conveyance by the words "*according to his estate and interest as such trustee as aforesaid ;*" but this is by no means essential to the protection of a trustee, who appears in that character on the very face of the conveyance, and who merely covenants that he has done no act to incumber the trust property.

Impropriety of speaking in the past tense in an instrument which has

It has been a very common practice to speak in the past tense in conveyances by way of lease and release, of grant, and of bargain and sale enrolled. This is incorrect, and not in accordance

CHAP. XII.

Practical directions for preparing the conveyance.

surance, where there is, as in every modern deed, an *habendum*, which in point of law is the proper part of the assurance for introducing the words of limitation; it being the office of the premises to name the grantee and describe the parcels, and of the *habendum* to limit the estate. The name of the parties, whether grantor (2 Ventr. 141) or grantee, may be supplied by the context; but unless this construction is perfectly clear from the context, the court will not admit it: (Co. Litt. 7 a; *Spyve* v. *Topham*, 3 East, 115.) Great care, therefore, as a learned modern writer observes, should be taken in framing these parts of deeds, as any error here, unless helped by the court, will be fatal; and as it is the governing part of the deed, all other parts which are repugnant to it will be held void: (2 Stew. Con. 35 n.)

Where the purchaser is one of the conveying parties.

If the purchaser himself must necessarily be one of the conveying parties, as in the instance of a mortgagee purchasing the equity of redemption, (*a*) a direct conveyance to him would be improper; but this difficulty is easily gotten over by conveying through the medium of a trustee, and where the property is to be conveyed to dower uses, the dower trustee would be the proper party for the property to be conveyed to, which should be limited to such dower trustee and his heirs, *habendum* to him and his heirs, to such uses as the purchaser shall appoint; and in default of appointment, to the use of the purchaser for life without impeachment of waste, with the usual limitation to the use of the dower trustee during the life of the purchaser, and with the ultimate remainder to the use of the purchaser, his heirs and assigns for ever: (see the form, *infra*.)

(*a*) That a mortgagee may so purchase, see *ante*, vol. i. p. 236.

Practical directions for preparing the conveyance.

In disentailing deeds under the Fine and Recovery Substitution Act (3 & 4 Will. 4, c. 74), a conveyance may, as we have already seen (*ante*, vol. i. 176), be made with the protector's concurrence, without the latter departing with his interest; but which a tenant to the *præcipe* under the old system must have done: (see the form, *infra*, No. XXIII.) Hence, in the case of a tenant for life, who is the protector of the settlement, concurring in the conveyance by the next immediate tenant in tail, but wishing to retain his own life-interest in the property, the *testatum* should express that the tenant in tail, with the consent of the protector, as such protector, &c. grants, &c.; the protector himself should neither grant, release, convey, nor even confirm, but his name should be inserted as the first party to the conveyance; his consent should be expressed in such conveyance, and then his hand and seal being placed to it will be conclusive evidence of his consent, which is all that is essential to the assurance so far as he is concerned: (see the form, *infra*, No. XXII.)

Disentailing deeds.

Parcels.

In describing the parcels, care must be taken that the description is sufficiently descriptive, so as, on the one hand, to comprehend every part of the purchased property intended to be conveyed, and on the other hand, to exclude any portion that may be intended to be reserved to the vendor. At law, no more will pass than is well described, and, by the same rule, all that is described, and which the vendor has the power to convey, will pass: (2 Prest. Conv. 447.) But the rule is otherwise in equity, as that court will rectify an error where any portion of the parcels have been by mistake omitted, or by decreeing a reconveyance where more has been inserted in the conveyance than was the subject-matter of the contract (*Rob* v. *Butterwick*, 2 Pri. 190; *Thomas* v.

CHAP. XII.

Practical directions for preparing the conveyance.

Davis, 1 Dick. 301; *Young* v. *Young*, *ib.* 625; *Beaumont* v. *Bramley*, 1 Turn. 41); still that seems to be an equity attaching merely as between vendor and purchaser and their respective representatives, and does not affect the issue in tail or remainder-men, neither of whom, it seems, can be compelled to supply an omission of this kind.

Description of parcels should correspond with that contained in former deeds.

The description of the parcels in the deed of conveyance ought to correspond with that inserted in former deeds, so as to show the identity of the lands throughout the title; unless where the property has been subdivided into parcels, when such a description must be necessarily improper. Whenever cases of this kind occur, Mr. Preston suggests that the new description should be as simple as possible, and that the attention should be directed to select those circumstances of description which will distinguish the property from any other, and to take the most obvious circumstances of certainty as the foundation and groundwork of the description: thus, "all that messuage, tenement, and farm called, situate, &c. which said hereditaments consist, &c. and were formerly the inheritance of," &c.: (1 Prest. Conv. 447.) The advantage of adopting this mode, he observes, is, that the subsequent part of the description is independent of the former part of it, and therefore, though the subsequent circumstances of description may be erroneous, this error will not vitiate the grant, since that which is certain of itself cannot be destroyed by that which is uncertain, false or insensible; in support of which the learned writer cites from Bacon's Maxims (Nos. 13 and 25), "*falsa demonstratio non nocet: nil facit error in nomine cum de personâ* (or *de se*) *constat. Veritas nominis tollit errorem demonstrationis:*" (see also Shep. Touch. 246; *Doe* v. *Greathead*, 8 East, 91.)

Where the conveyance

Sometimes trustees or mortgagees refuse to

convey by any other description than that by which the lands were conveyed to them, lest they should render themselves responsible for passing more than was so vested in them; but this apprehension seems groundless, particularly as qualifying words may be used so as to confine the lands in question to those originally conveyed to them.

is by trustees and mortgagees.

It frequently happens that distinct parcels held under different titles are all included in the same deed. When such is the case, the parcels may be described in the order in which they are mentioned in the recitals,—as first, "all," &c.: and then, after describing the parcels, may be added, "all which said hereditaments and premises are comprised in and described by the said hereinbefore recited indenture," &c. Secondly, "all," &c. referring in like manner to the recital relating to it, and so through all the remaining parcels. Where, however, the parcels are very numerous, the plan laid down by Mr. Preston appears to be a most neat and accurate mode; which is, to insert the parcels comprised in each class of deeds in a distinct schedule, and to make a reference, from time to time, in the recitals, and also in the grant, to the appropriate schedule; thus the recital will be to this effect:—"Whereas, by indentures, &c. all, &c. which are described and comprised in the first schedule to these presents, with their appurtenances, were conveyed," &c. Or, when the circumstances require it, the recital may assume this form:—"Whereas, by indenture bearing date, &c. divers hereditaments, and amongst them all those, &c. comprised in the first schedule to these presents, were conveyed," &c. The other recitals can be expressed in similar terms, adapting, of course, the recital to the circumstances. The grant must be by words of reference to the description in the schedules, and will be governed by the intention of the

Where distinct parcels are held under different titles.

CHAP. XII.

Practical directions for preparing the conveyance.

parties. In general it will be to the following effect:—"All those messuages, &c. which are comprised and described in the first, second, third and fourth schedules to these presents:" (see the form, *infra*, No. XXXV.) If the general words be added to each parcel in the schedule, then the reference will be to the rights, members and appurtenances, by general words: thus, after the words, "every part and parcel of the same," add, "with the rights, members, and appurtenances;" but when, as is the more frequent practice, the general words are not inserted in the schedule, they should be introduced in the body of the deed, in the same form as if the description of the parcels had been there inserted, instead of being contained in the schedules: (1 Prest. Conv. 458.)

Where freehold and copyholds lie intermixed together.

If freehold and copyhold lands are intermixed together, and such are the subject-matter of conveyance, every care must be taken not to include the copyholds in the operative part of the grant, though instances sometimes occur where it is impossible to avoid this, from the inability to distinguish, with any degree of accuracy, what portions of the lands are actually freehold and what copyhold. To obviate this difficulty, it has been suggested that the grant itself should be of all such and so many and such parts as are of freehold and not of copyhold tenure, of and in all, &c. adding a full description of all the parcels, including the freehold and copyhold lands, or inserting such parcels in a schedule annexed to the deed: (see 2 Prest. Conv. 458.)

Parcels sometimes described in the recitals.

In appointments made in exercise of a power, the description of the parcels is often inserted in the recital of the instrument creating the power; the general words, also, are usually curtailed, being commonly restricted to the terms "with the appurtenances, or with the rights, members and appurtenances thereunto belonging," and the

reversion clause, all-estate clause, and grant of deeds, are usually omitted. In assignments of leasehold property, it is also very common to describe the parcels in the recital of the deed by which the term was originally created; and where the conveyance is by trustees or mortgagees, the parcels are sometimes inserted in the recital of the deed creating the trust or mortgage. But in most other instances the parcels are inserted in the operative part of the deed.

How property not intended to pass should be excluded.

When the parcels under a general denomination are calculated to pass more lands than are the subject-matter of contract, it will be necessary to except the latter in express terms out of the conveyance. This exception can only be made to the grantor, or rather it cannot be made to a stranger; and if no name be mentioned, but the property be merely excepted, the grantor will be entitled to it during his estate in the premises: (Shep. Touch. 100.) If, however, the exception be only made to him during his life, it will be severed only during that period, and on his death revert to the purchaser. (*Ib.*) Where an exception is most frequently employed, is where there is a grant of manor, and some of the demesnes are to remain the property of the grantor, or are to be conveyed to other persons: (2 Prest. Conv. 462.)

Of the general words.

After the description of the parcels, were usually added such general words as might be supposed to cover anything omitted in the description; but, generally speaking, the simple term "appurtenances" would have included everything they enumerated. Then came the reversion clause, which was considered rather a formal than a necessary part of the conveyance; then the all-estate clause, but which was of course omitted in all well-penned instruments, where a particular estate only was intended to pass, and was also inapplicable to the character of a feoffment.

CHAP. XII.

Practical directions for preparing the conveyance.

though often inserted therein, livery being made of the possession and not of the estate of the feoffor. Now, under the recent act, 8 & 9 Vict. c. 106, but which seems merely explanatory of the law as it stood previously, it is enacted "that every such deed made in pursuance of that act, unless any exception be specially made therein, shall be held and construed to include all houses, outhouses, edifices, barns, stables, yards, gardens, orchards, commons, trees, woods, underwoods, mounds, fences, hedges, ditches, ways, waters, watercourses, lights, liberties, privileges, easements, profits, commodities, emoluments, hereditaments and appurtenances whatsoever to the lands therein comprised belonging, or in anywise appertaining, or with the same demised, held, used, occupied and enjoyed, and taken or known as part or parcel thereof, and also of the reversion or remainders yearly, and other rents, issues and profits of the same lands, and of every part and parcel thereof; and all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim and demand whatsoever, both at law and in equity, of the grantor in, to, out of, or upon the same lands, and every part and parcel thereof, with the appurtenances." (Sect. 2.)

All-deeds clause.

The concluding clause of the premises is the grant of all deeds. This, it seems, is not absolutely necessary to entitle the purchaser to the custody of the documents relating to the title, as it seems they will pass to him as incidental to his purchase, unless the vendor retains part of the estate, or has entered into qualified covenants for the production of them to a third person (*Field* v. *Vea*, 2 T. R. 608); or, according to the old authorities, where a feoffor has entered into a general warranty, who in that case would, it is said, be entitled to retain the deeds in order to enable him to defend the title he has thus

warranted: (Co. Litt. 6.) In case, however, the deeds relate solely to the property conveyed, the purchaser may recover them in an action of trover without any express grant of such deeds being made to him: (*Hooper* v. *Ramsbottom*, 1 Marsh. 414.) But if the grantor retains any part of the lands the deeds will belong to such grantor, unless expressly granted by words sufficient to transfer the property: (*Field* v. *Yeu*, 2 T. R. 78.)

Purchaser entitled to covenant for production of title-deeds, if the original are not delivered to him.

When, however, the title-deeds are retained by the vendor, the usual practice is for him to enter into a covenant to produce them, and a Court of Equity will never decree a specific performance if the vendor refuses to do so: (see the form, *infra*, No. 16, clauses 5, 6; *ib.* No. 17.) In the absence of an express stipulation to the contrary, the vendor is, as we have already seen, (vol. i. pp. 6, 32), compelled, at his own expense, to supply the purchaser with attested copies where he cannot obtain the deeds themselves. Still, it seems, that will not extend to every document relating to the property, but will include such only as are necessary to make a good title. Nor does the rule apply to instruments of record, for these the vendor cannot be compelled to be at the expense of supplying.

6. *Exceptions.*

Practical observations.

After the general words come the exceptions, if any, by which the grantor excepts a particular thing out of the property conveyed; which being his own act and words, shall be construed against him strictly: (10 Rep. 106, a.) In order to support an exception it must be of such things as he who makes such exception may have and do belong to him: (Shep. Touch. 79; 12 Rep. 126.) It must not be of the whole thing granted, but of a part thereof only: (Cro. Eliz. 6, 244.)

CHAP. XII.

Practical directions for preparing the conveyance.

The thing that is excepted must be part of the thing previously granted, and not of some other thing: (Dig. 59 a, pl. 11; Shep. Touch. 78, 79.) The thing excepted must be of such a thing as may be severed from the thing granted, and not of inseparable incidents: (Dig. 59, a.) But if inseparable incidents, as if a *manor* be granted, excepting the courts baron, &c.; or land be granted, excepting the common appurtenant thereto belonging, these exceptions are void: (Hob. 101, 170; 11 Rep. 50, a.) It must be a particular thing out of a general, or of a part of an entire thing, and not of a particular out of a particular, or the whole of the thing itself granted. If the exception be of a *particular thing* out of a particular thing, as if one grants Whiteacre and Blackacre, excepting Blackacre, this exception is void, as it likewise would be, if one were to grant twenty acres of land by *particular names*, excepting one acre of them. An exception must also be in conformity with, and not repugnant to the grant: (Hob. 72, 170.) And the things accepted must also be described with as much certainty as if it were to be granted: (Shep. Touch. 78; *Wilson* v. *Armourer*, L. Raym. 207; Wat. Conv. by Merifield, 551.)

7. *Habendum.*

Habendum, A formal, but not an essential part of a deed.

The *habendum* is a formal, but not an essential part of a deed, for if it were to be omitted altogether out of it, the deed would nevertheless be good. In some assurances indeed the *habendum* clause ought to be omitted as in appointments in execution of powers; as it ought also to be in all instruments operating by way of extinguishment, and not of enlargement, or surrenders which destroy the estate, in each of which assurances, a clause declaratory of the object of the instrument should be substituted for

the *habendum*. In case also of a release by one joint tenant to his companion, it will be more correct simply to release to him, omitting the *habendum*, where the release is simply to him in fee; but if it is intended to limit the property to dower uses the proper course will be for both the joint tenants to convey to a trustee, and to limit the uses in favour of the purchasing joint tenant, to arise out of such trustee's seisin: (see the form, *infra*).

When *habendum* is repugnant to granting clause, the latter shall prevail.

If the *habendum* be repugnant to the granting part of the deed, the *habendum* will be rejected, and the grant will prevail; but where the limitations are such that they may well stand together, and so that both may operate, they will not be considered as repugnant; as, in the case of a grant to a man and his heirs, *habendum* to him and the heirs of his body, in which case the grantee will take an estate tail, with a fee simple expectant thereon: (Co. Litt. 21, a; 5 Roll. Rep. 19; Cro. Jac. 476.) And as all grants, as we have already seen, are taken most strongly against the grantor, if he limit no estate at all by the granting clause, and an estate is limited by the *habendum*, the *habendum* will stand: (Co. Litt. 183, a; 8 Rep. 154, b.) So, if a smaller estate, as an estate for life, is given in the granting part, and a larger, as an estate in fee, in the *habendum*, the *habendum* will prevail (Co. Litt. 299); but if the latter should be a smaller, or a void estate, it will be held repugnant and void, and the granting part will stand: (2 Roll. Rep. 24, a; 2 Bac. Abr. 494; Hob. 171.)

Office and operation of the *habendum*.

The office of the *habendum* is to limit the estate of the grantee, by name, with such additional words as will clearly and unequivocally express the estate he is to take, as, in fee, in tail, for life, or for years. So, if necessary, it should modify or control the construction of law, as expressing it to be limited, if so intended, to tenants

CHAP. XII.

Practical directions for preparing the conveyance.

in common, when general words might make them joint tenants: (see 2 Prest. Conv. 467; 2 Roll. Abr. 67; 11 East, 115.)

Habendum clause, how usually worded.

The clause commences, "TO HAVE AND TO HOLD," or if brevity is very important, the three first words may be left out, and it may stand as, "TO HOLD" only; which are the only operative words actually necessary. The property previously granted should then be referred to in terms sufficiently comprehensive to embrace it, and, in case the conveyance is to be in fee, it should be limited to the grantee and his heirs, to whose use the property is declared to be, or, if such be the intention, other uses should be declared to arise out of his seisin. Where there is a sufficient consideration, although no use is expressed, such consideration will be sufficient to raise a use in the grantee; but if no consideration be expressed, or reserved, nor a declaration made, the use will then result to the grantor, and he will be in as of his former estate: (Sand. Uses, 61; Co. Litt. 12 b, n. (2).)

8. *Limitation of Uses.*

Uses, how limited in modern assurances.

In modern conveyances to purchasers, the property is usually limited either simply to the grantee in fee, or to dower uses. When the former course is adopted the usual words are, "To have and to hold the said messuages, &c. unto the said A. B. and his heirs, to the use of the said A. B. his heirs and assigns for ever, or to the only proper use and behoof of the said A. B. his heirs and assigns for ever," or, "To have and to hold, &c. unto and to the use of the said A. B. his heirs and assigns for ever;" but either form will have the same operation.

Operation of the modern limitation to uses.

In this case the limitation does not operate by way of use, but as a limitation at common law; for where the party seised to the use, and the *cestui que use* is the *same person*, he never takes

by the statute except there be a direct impossibility for the use to take effect at common law: (Bac. Abr. Uses, 63; Sand. Uses, 91; Com. Dig. tit. "Fait," (E. 9).) But although the release is in by the common law, yet after the declaration of use to him, he has not only a seisin but a *use*, although not the use which the statute requires; and, therefore, that seisin which, before the limitation of the use to himself, was open to serve uses declared to a third person, is by the limitation filled up, and will not admit of any other use being limited upon it: (Sand. Uses, 91; Wat. Conv. by Merifield, 552; 2 Prest. Conv. 481.) The effect, therefore, in the *habendum* of the words, "to the use of him the said purchaser, his heirs and assigns for ever," is to prevent any further legal use being limited to a third person. For this reason, therefore, where any limitations of uses are to be declared in favour of third persons, the clause limiting the use to the releasee should be left out, otherwise the use will vest the legal use in him, and the uses limited to arise out of his seisin will be mere equitable estates: (1 Sand. Uses, 263.)

Old mode of limiting estates to bar dower.

The right of dower which formerly attached on a conveyance of lands, and which in fact still does as to husbands married previously to the year 1834, being found a clog upon the free alienation of property, it was deemed expedient to adopt some plan by which this impediment might be removed. The first method resorted to (and though now obsolete, has not very long been discontinued) was to limit the estate to the purchaser and his trustee as joint tenants in fee, but declaring that the latter only held as a trustee for the purchaser, by which means the wife's dower was prevented from attaching during the continuance of the joint estate of the purchaser and his trustee (Litt. s. 45; Co. Litt. 37, b; Bro. 4, 84; Perk. 334; *Broughton* v. *Bandall*, Cro. Eliz.

CHAP. XII.

Practical directions for preparing the conveyance.

502; *Amcoth* v. *Catherick*, Cro. Jac. 615; *Sneyd* v. *Sneyd*, 1 Atk. 442); but it was still liable to attach on the death of the trustee in the husband's lifetime, as the husband would then have become solely seised. The inconvenience resulting from this gave rise to the practice of limiting the lands "to the purchaser and his trustee, and the heirs of the trustee," or immediately to the trustee and his heirs, in trust for the purchaser and his heirs (*Curtis* v. *Curtis*, 2 Bro. C. C. 620), in both of which cases the legal seisin of the husband was prevented by the creation of the trust; but notwithstanding the last objection was obviated by this mode, it was still open to other objections. It kept the legal estate from the purchaser, and exposed him to the possibility of its escheating to the crown for want of heirs of the trustee, or to the inconvenience of its becoming vested in infants, married women, or persons residing at a distance not easily discoverable, or not willing to join in the conveyance required to be made of it: (Co. Litt. 379, b, n. 1.) To prevent all these troublesome consequences, therefore, a mode of limitation was next introduced by which a right of dower was permitted to attach upon the estate, but subject to be divested by the act of the husband in his lifetime. This was effected by limiting the property to such uses as the husband should appoint, and in default of appointment, to the use of his right heirs: (Co. Litt. 216, a, n. 2.) Until this power was exercised by the husband, he was actually seised of an estate of inheritance in possession on which the right of dower attached; but upon his making the appointment, it was considered that as the appointee came in as if named in the deed creating the power, he was in paramount to the right of dower in the wife, and consequently held the estate discharged from her claims thereto. Considerable doubts, however, appear to have been at one time entertained

as to the efficacy of this mode of limitation, upon the principle that the right of dower having once attached, could not be defeated by the act of the husband alone: (*Cox* v. *Chamberlain*, 4 Ves. 637; *Maundrell* v. *Maundrell*, 7 *ib.* 567.) It has, however, been since decided that the husband, by exercising his power, can wholly bar his wife's claim to dower: (*Maundrell* v. *Maundrell*, 10 Ves. 246; *Rae* v. *Pung*, 5 B. & A. 561; S. C. 5 Madd. 561: *Moreton* v. *Lees*, cited 5 Madd. 318; *Doe* v. *Jones*, 10 B. & C. 459.) Still this mode of limitation is not always to be depended on. The power of appointment is liable to be suspended and destroyed, and as its existence is the only circumstance which precludes the wife from her dower, there must always be a possibility of danger (though perhaps sometimes so small as scarcely to deserve attention) in taking a title which depends upon it: (Co. Litt. 216, b, a, n. 2.)

Modern mode of limitation to bar dower.

At length a method was found out by which all the advantages of the former modes were secured, and every inconvenience removed. This was the present form of dower uses now commonly inserted in conveyances, by which the property is limited to such uses as the purchaser shall appoint (which gives him a power of disposition over the whole fee, which if he exercises, the appointee will be in under the original conveyance, and so paramount to the claims of the wife), and in default of appointment to the use of the purchaser for life, with remainder, in case of the determination of the purchaser's life-estate, to his dower trustee during the life of the purchaser, with the ultimate remainder to the purchaser in fee, which ultimate remainder, by the interposition of the limitation, is an estate in remainder, upon which no right of dower in the wife could possibly attach: (Butl. Note to Co. Litt. 379, Fearne, C. R. 347: see the form, *infra*, No. 1. clause 6.)

CHAP. XII.

Practical directions for preparing the conveyance.

How the limitation to uses to bar dower should be framed.

In uses to bar dower, the lands are sometimes limited to such uses as the purchaser shall, by deed sealed and delivered by him in the presence of and attested by two or more credible witnesses, or by his last will or testament in writing, signed and published by him in the presence of a specified number of witnesses, appoint. One of our most celebrated text-writers (Mr. Butler), however, very properly observes that no good reason can be assigned for requiring any specific number of witnesses to the execution of the deed by which the power is executed, it being quite sufficient to state that the power is to be executed by deed generally. It is also unnecessary to extend the power to testamentary dispositions, for, as the will does not take effect until the purchaser's death, when the trustee's estate ceases, the power is not wanted for the purpose of overriding his estate; and the interposed estate of the trustee prevents the dower from attaching at all during the lifetime of the purchaser, so that both his heir and devisees would take exempt from the dower. The power of devising by will, the same learned writer continues to observe, is therefore useless; but it is attended with this inconvenience, that it sometimes gives rise to nice questions, whether the disposition operates as a devise of the land, or as an appointment of the use, and thus makes it doubtful in whom the legal estate is vested. For this reason, he says, it seems advisable to omit wholly out of the clause the power of devising by will: (see Butl. Note to Fearne, C. R. 437.) The earlier practice in framing limitations of this kind was to limit the interposed estate to the dower trustee and his heirs, but the modern one generally is to make the limitation to his executors and administrators, it being in general more easy to find and obtain the concurrence of a

personal representative than an heir, the former of whom are also less liable to be labouring under legal disability, though, as such estates are not often required to be conveyed, little practical inconvenience is likely to result for want of the concurrence of either the dower trustee or his representatives, so that it is not very material what mode of limitation is annexed to his estate. With respect to the ultimate limitation, Mr. Butler suggests (see his note to Fearne, C. R. 438), that as a life estate is first limited to the party, it seems more accurate to limit the fee to his heirs and assigns, and not to the party, his heirs and assigns. This Mr. Hayes pronounces to be at once theoretically wrong, and practically dangerous, depending, as he truly observes, upon the rule in *Shelley's case*, which in some instances might not be applicable, particularly in the case of limitations differing in quality, as where the one is legal, and the other equitable. In most modern conveyances we certainly find a preference given to the limitation to the purchaser, his heirs and assigns, to the form recommended by Mr. Butler, though, as far as conveyances to purchasers are concerned, it can rarely happen that the latter may not be safely adopted.

Limitations to dower uses less essential than formerly.

Dower uses are not so necessary now as formerly, because, since the Dower Act, 3 & 4 Will. 4, c. 105, all men unmarried previously to the year 1834 may debar their wives of their dower by conveying away the property, which, unless protected by dower uses, the husband could not have done before; nor will the dower uses be sufficient to exclude a widow married after 1834, but the same object may, nevertheless, be effected by a declaration made by him and inserted in the purchase-deed, and which is usually done immediately after the limitation of the uses: (see the form, *infra*, No. I.,

CHAP. XII.

Practical directions for preparing the conveyance.

clause 7.) And where a purchaser has been married previously to 1834, the usual plan is to limit the lands to dower uses, so as to bar the dower of the present wife, and to superadd a declaration to bar the dower of any other woman with whom he may happen to intermarry at any future time. It has, indeed, been suggested, that even if limitations to bar dower should be rendered unnecessary by the Legislature, the power of appointment should still be retained, on account of the facilities it affords for acting on the ownership by a single instrument, and for the protection it allows against judgments; but the latter will now only do so in favour of a purchaser who has no notice of them, which has reduced this protection within far more narrow limits than formerly: (stat. 1 & 2 Vict. c. 110.) Still the clause confers sufficient advantages to allow it to retain its place in purchase-deeds. The protection it affords to purchasers, without notice against incumbrances, is an advantage as far as it goes, and the power of conveying by appointment may often prove exceedingly convenient, particularly in small purchases, where the saving of the stamp duty on the lease for a year may be in some degree important.

9. *Covenants.*

Vendor can only be required to enter into qualified covenants for title.

Generally speaking, a vendor of real property can only be required to enter into qualified covenants that he is seised in fee, has good right to convey, for quiet enjoyment, freedom from incumbrances, and for further assurance. Where, however, a vendor takes by descent, or derives his title through a will, the purchaser is entitled to have the covenant extended to the acts of the vendor's ancestors and testators (*Lloyd* v. *Griffith*, 3 Atk. 267); for if restricted to the acts of the vendor and those claiming under him, though this covenant would comprehend a claim of his

own wife to dower, it would not include a similar claim of the widow of a preceding ancestor or testator, or in fact any other incumbrances attaching on the property through the acts, deeds, defaults, privity, or procurement of such ancestor or testator. Where a vendor conveys under a power of appointment, he should, previously to the usual covenants for title, covenant that the power is a good and valid and subsisting power.

General covenant for title.

Where a vendor is unable to show a good title, he sometimes undertakes to covenant against the acts of all mankind, but this he cannot be compelled to. If a title is defective a purchaser has a right to rescind the contract, but he cannot call upon the vendor to confer such a title as the latter possesses, and to indemnify him against all claims and demands to which the property may be liable. And it must also be borne in mind, that even general and unrestricted covenants for quiet enjoyment against the acts of all mankind, will not extend to a wrongful eviction, but only to evictions by parties having lawful title to the property: (*Hayes* v. *Bickerstaff*, Vaugh. 118; *Dudley* v. *Foliot*, 3 T. R. 384.) But if a vendor covenants against the acts of any particular person by name, this will include an eviction or disturbance of that person, by wrong, as well as by right: (*Foster* v. *Mapes*, Cro. Eliz. 212; 1 Roll. Abr. 430; *Hayes* v. *Bickerstaff*, *sup.*; *Nash* v. *Palmer*, 5 Mau. & Selw. 574; *Fowle* v. *Welsh*, 1 Barn. & Cres. 29.) Any acts of a vendor asserting a title, who has covenanted against lawful incumbrances, will amount to a breach of covenant, although such acts may be made the subject of an action of trespass (*Crosse* v. *Young*, 2 Show. 425; *Lloyd* v. *Tonkies*, 1 T. R. 671); but merely sporting over the lands will not be so considered: (*Seddon* v. *Senate*, 13 East, 72.) A suit in equity is, however, a breach of cove-

CHAP. XII.

Practical directions for preparing the conveyance.

nant against disturbances generally: (*Calthorp* v. *Hayton*, 2 Mod. 54; *Hunt* v. *Danvers*, T. Raym. 370.)

Covenant that vendor is seised in fee, and has right to convey.

The covenant that the vendor is seised in fee, and the covenant that he has good right to convey, are considered as synonymous covenants; consequently qualifying words annexed to the first covenant will attach to both (*Newins* v. *Munns*, 3 Lev. 46; *Browning* v. *Wright*, Bos. & Pull. 139); but the covenants for quiet enjoyment, and freedom from incumbrances, are distinct covenants, and therefore qualified words in the commencement of the first covenant will not extend to them. The covenant for seisin, therefore, being synonymous with the covenant that the vendor has good right to convey, the former is now usually omitted in most modern assurances, and always where brevity is an object. The right to convey embraces not only the estate of the vendor, but also his power to convey it; hence, where a vendor, in a conveyance made by him and his wife of her lands, covenanted that they had good right to convey, she being then under age, was holden to be a breach of covenant: (*Nash* v. *Ashton*, T. Jones, 195.)

Covenant for quiet enjoyment.

The covenant for quiet enjoyment being, as we have just before remarked, a distinct covenant from the covenants for seisin in fee, and for right to convey, it must, for the reasons above stated, commence with words of qualification. This covenant is usually qualified by restricting the breach to lawful disturbances, and by parties rightfully claiming, although this, as we have already seen, is not strictly necessary, as an unrestricted covenant will not extend to a tortious eviction. In case the property is sold subject to any incumbrances, as mortgages, rentcharges, quit rents, or the like (*Hammond* v. *Hill*, Com. Rep. 180), a saving clause should be inserted at the end of the

covenant, as it also should in case there are any subsisting leases; although the fact of possession by the tenant is, as we have already seen (*ante* p. 72), to be deemed sufficient notice to a purchaser of the interest he has in the land.

Freedom from incumbrances.

The general words of the covenant for freedom from incumbrances, usually embrace every kind of instrument and mode by which an incumbrance can be created, or by which the premises can be claimed or charged. In former times it was a more frequent practice to set out, and particularize the several species of incumbrances, as "all gifts, grants, bargains, sales, leases, mortgages," &c.; but this is unnecessary, and answers no other purpose than to swell the bulk of the deed; it is sufficient to covenant against incumbrances generally, without any particular specification, unless the estate is subject to a known incumbrance, then, it seems, if a purchaser intends to rely upon a vendor's covenants, they should be made expressly to extend to such incumbrance, otherwise it may be presumed that he took the estate subject to such incumbrance, and this should be added to the end of the covenant as follows: "and particularly of, from and against a certain quit rent," &c. In general it will be sufficient to state that the property shall be enjoyed "free from all former and other estates, rights, titles, liens, charges, and incumbrances made or created," &c.

For further assurance.

The covenant for further assurance runs with the land in like manner as the covenants for title, and will consequently be binding on the assignees of the vendor in case he should become bankrupt, who will be compelled to execute further assurances, although the vendor was only tenant in tail, and did no act for the purpose of barring the entail (*Pye* v. *Danby*, 3 Bro. C. C. 393.) Nor will bankruptcy, and the certificate of the covenantor,

CHAP. XII.

Practical directions for preparing the conveyance.

operate as a bar to a breach of this covenant, although the cause of action accrued before the bankruptcy was committed (*Mills* v. *Auriol*, 1 H. Black. 433 ; *Hammond* v. *Toulmin*, 7 Dunf. & East, 612.) Any act of the vendor by which he disables himself from executing this covenant will amount to a breach, although no request be made to him to perform it (*Moore*, 453, 755 ; Poph. 109 ; Cro. Eliz. 450, 479 ; 5 Roll. Rep. 20), for it would be useless to make a request that could not possibly be complied with, and although he afterwards restores his ability, yet this will not avail him : (5 Rep. 50.) The right of action upon a covenant for further assurance, will descend on the heir, and not to the executor, where the ancestor sustained no actual damage for the breach : (*King* v. *Jones*, 3 Taunt. 418 ; 1 Marsh, 107 ; 4 Mau. & Selw. 118 ; *Kingdon* v. *Nottle*, 1 Mau. & Selw. 355.) It belongs to the purchaser's counsel to name the assurance that is to be made : (*Higginbottom's case*, 5 Rep. 86 ; *Roswell's case*, 5 Rep. 19 *b*.) But a vendor cannot under this covenant be compelled to assure by warranty : (1 Mod. 67 ; 2 Lev. 140.) And it is doubtful if a purchaser can require a covenant for the production of title-deeds in the absence of an express contract to that effect. This question arose, but was not decided in the case of *Fain* v. *Ayres* (2 Sim. & Stu. 533), but the prevailing opinion of the profession seems to be that a purchaser has no such right, for the covenant for further assurance appears to be restricted to an assurance by way of conveyance, and not to comprehend further obligations to be imposed on the covenantor by way of covenant : (*Hallett* v. *Middleton*, 1 Russ. 243.) It has also been held, that when a person has once executed such further assurance as the counsel for the party requiring it advised, he is discharged from his covenant, although such assurance turn out in-

Practical directions for preparing the conveyance.

sufficient for the purpose intended: (See Wat. Convey. by Merifield, 559; 1 Bart. Prec. 155; 5 Rep. 23; 3 Mod. 191, 192; Vaugh. 34; *Lassels* v. *Calterton*, 1 Sid. 467.)

Purchaser's remedies for breach of covenant.

The purchaser may either bring his action at law for damages for breach of this covenant, or he may file a bill in equity for a specific performance of it: (*Edwards* v. *Applebee*, cited 2 Bro. C. C. 652.) But a covenant of this kind will not be supported in equity, unless the justice of the case demands it; consequently, if any fraud or oppression has been employed by the purchaser, or any undue advantage has been taken of the vendor's situation, or the premises have been sold at an under value, or the like (*Johnson* v. *Nott*, 1 Vern. 271; *Zouch* v. *Swain*, *ib.* 320), equity will not assist the purchaser by decreeing a specific performance of this covenant.

When vendor retains title-deeds, purchaser is entitled to a covenant for their production.

In case the vendor retains the title-deeds, the purchaser will be entitled to a covenant from him for their production, and also to supply copies, extracts, or abstracts of them. A covenant of this kind may be included either in the purchase-deed (see the form, *infra*, No. XVI., clauses 5, 6), or it may be entered into by a separate instrument: (see the form, *infra*, No. XVII.) When contained in the purchase-deed, it usually comes in at the end, and is preceded by a short recital that the deeds and writings contained in the schedule thereto annexed, relate as well to the title of the property thereby conveyed, as of certain other property of the vendor, who is to retain the deeds on entering into the covenant for their production. If the covenant is contained in a separate deed, the conveyance to the purchaser should be first of all recited, and then should come the recital that the vendor is to retain the deeds. A slight variation will, however, be requisite where the title-deeds, instead of being retained by the vendor, are handed over

CHAP. XII.

Practical directions for preparing the conveyance.

by him to a purchaser, who covenants for their production. A covenant for the production of title-deeds is a covenant running with the land in favour of the purchaser, but not in favour of a vendor: (*Barclay* v. *Raine*, 1 Sim. & Stu. 449.)

Covenant that wife shall acknowledge deed.

The late Fine and Recovery Substitution Act (3 & 4 Will. 4, c. 74) has also introduced a new covenant into purchase-deeds, which, where the circumstances call for it, must be considered as a usual one, and one which a purchaser has a right to have inserted in the conveyance,—and this is, that the deed shall be duly acknowledged by the vendor's wife, in pursuance of that act. This covenant is generally inserted immediately after the limitation of uses, and preceding the covenants for title: (see the form, *infra.*)

Where wife is a conveying party her husband must covenant for her.

As a married woman is incapable of entering into a covenant, her husband, where she is a conveying party, should covenant for her.

How covenants should be framed where the parties are numerous.

Where the conveying parties who are to covenant for title are numerous, and when brevity is desired, instead of going through the whole string of their names, it will be sufficient to describe them as the parties thereto of the first, second, third, fourth and fifth parts, as the case may be, and if any of such parties are married women, a covenant from their husbands for them should be added shortly in the following terms: "such of them as are married covenanting for their respective wives," &c.: (see the form, *infra*, No. XX., clause 5.)

Covenants by trustees, mortgagees, heirs-at-law, executors, &c.

Trustees, mortgagees, heirs-at-law, executors and administrators, when they convey or concur in the conveyance in those characters, can only be required to enter into covenants that they have done no act to incumber (see the forms, *infra*, No. XV., clause 7; No. XXVI., clause 7); but heirs, executors or administrators, who take also a beneficial interest in the property conveyed, will, like

other vendors, be bound to enter into the usual qualified covenants for title.

When vendor will be entitled to a covenant of indemnity.

Where a mortgagor sells his equity of redemption, he is entitled to a covenant of indemnity from the purchaser, by which the latter covenants to pay the mortgage-money, and to indemnify the vendor from all claims in respect thereof: (see the form, *infra*, No. IV., clause 8.) In assignments of leaseholds, also, the assignee must covenant to indemnify the vendor from the covenants contained in the original lease, the further consideration of which we must defer until we come to treat of assurances of property of that description.

With whom the covenants should be entered into.

We must now proceed to consider who will be the proper parties to enter into the covenants. To arrive at the right conclusion, the limitations in the *habendum* will be the proper guide to go by. If the limitation is direct to the purchaser, as unto and to the use of A. B., his heirs and assigns, or to dower uses for his benefit, then A. B. will be the party with whom the covenants should be entered into (see the form, *infra*, No. I., clause 8); but if the limitation had been to J. S. and his heirs, to the use of A. B., his heirs and assigns, then J. S. would have been the party who should be the covenantee; for, although the seisin of J. S. is merely transitory, for the purpose of serving a use, and his estate is divested the same instant it takes place, still, as he is the person who takes the first actual estate in the land, in order that the covenants may become annexed thereto and continue to run therewith through all the subsequent modifications which such land may undergo, he is the right person to be the covenantee, although the very next instant it passes over to the party in whom the use is executed: (*Roach* v. *Wadham*, 6 East, 289; see, also, 7 Jarm. &

CHAP. XII.

Practical directions for preparing the conveyance.

Byth. 514.) In penning covenants of this kind, the same terms of limitation should be annexed to the name of the covenantee as in the *habendum;* as, for example, if the limitation is direct to A. B., his heirs and assigns, then the covenant should be expressed to be with him, his heirs and assigns; but if limited to J. S. and his heirs, to the use of A. B., &c., then it would be more correct for the covenant to be with J. S. and his heirs alone, thus agreeing with the *habendum* and the character in which he stands with respect to the conveyance.

SECTION III.

ASSURANCES OF COPYHOLDS.

When copyholds are alone the subject-matter of the purchase, a deed of covenant for title should accompany the surrender, as it is not the practice to insert covenants of this kind on the court rolls: (see the form, *infra*, No. XXXIII.) This deed requires only the common deed-stamp, the *ad valorem* duty on the purchase-money being charged on the surrender. Another mode, and which upon the whole seems to be the better plan, is, for the vendor to enter into a covenant to surrender, with a declaration of trust in favour of the purchaser, to which the covenants for title are added: (see the form, *infra*, No. XXXII.) When, however, the latter course is adopted, it may be prudent in some instances for the purchaser to ascertain that the surrender is perfected before he pays his purchase-money, as a mere covenant to surrender confers no more than an equitable estate, which the vendor himself might by possibility defeat by surrendering to a third party, who, if he had no notice of the previous deed of covenant, or of the former purchaser's title, would be entitled to the benefit of the legal estate, and thus it is possible that such former purchaser might lose the property altogether: (see 7. Jarm. Byth. 332; 7 *ib.*, 504, 505.)

SECTION IV.

ASSIGNMENTS OF LEASEHOLDS.

How assignments of leasehold property should be prepared.

In the assignment of estates for years, it is a very usual practice to describe the parcels in the recital of the deed creating the term, and to recite that by virtue of divers mesne assignments, &c., and ultimately, by the last assignment, the term is vested in the assignor. This form is well adapted for general purposes, but where the property has undergone any important alteration subsequent to the creation of the term, so that the original description would not be strictly applicable to it, —as where the demise was of a close of land, which has subsequently been built upon,—the parcels should be so described as to correspond with these changes, and instead of being included in the recitals, should be set out in the parcels clause. The operative words usually employed in an assignment are, "grant, bargain, sell, assign, transfer and set over." The terms "bargain" and "sell" are, however, inapplicable in the assignment, though proper in an original demise where it is intended to confer the possession under the Statute of Uses; but the statute has no application to the assignment of terms, and therefore it would be more correct to omit those expressions altogether. The strongest and most apt term is the word "assign;" the words "transfer and set over" will, however, have

the same operation; but when the most forcible term is employed, there can be no necessity of superadding other terms which can have no possible further effect and operation. The all-estate clause has been generally inserted in assignments, although it would be improper where the assurance instead of an assignment is intended to operate as an underlease; but though incorrect, it might nevertheless be controlled by the *habendum:* (*Derby* (*Earl of*) v. *Taylor*, 1 East, 502; see also *ante*, vol. i. p. 297, *et seq.*) The *habendum* should limit the premises to the purchaser for the residue of the term, but subject to the rents and covenants (if any) contained in the original lease. The vendor should enter into qualified covenants for title, viz., that the lease is a good subsisting lease, that the reserved rent has been duly paid, and that all the covenants on the part of the lessees have been duly performed; that the assignor has power to assign, for quiet enjoyment, according to the terms of the lease, freedom from incumbrances, and for further assurance: (see the form, *infra*, No. XXIX.) If the assignor is the original lessee, then the purchaser ought to covenant to pay the reserved rent, and observe and perform the covenants contained in the lease, and to indemnify the assignor therefrom (see the form, *infra*, No. XXIX); and this a purchaser of property of this nature is bound to do without any stipulation whatever to that effect: in fact, nothing but an express stipulation to the contrary can protect him from being compelled to do so: (*Pember* v. *Mathers*, 1 Bro. C. C. 52; *Staines* v. *Morris*, 1 Ves. & Bea. 8; *Wilkins* v. *Fry*, 1 Mer. 244.) But if, on the other hand, the vendor himself is only an assignee of the term, then the purchaser need not enter into any covenant of the kind, which, in a case of this nature, would be wholly uncalled for; because, as an assignee, the vendor

CHAP. XII.

Assignment of leaseholds.

is only liable to the rents and covenants during the continuance of his estate and interest in the premises, which necessarily ceases on his assigning over such interest to a third party, and there being therefore no longer any liability, there is nothing left to indemnify him from: (see *ante*, vol. i., p. 524, and the cases there referred to.)

SECTION V.

HOW MIXED ASSURANCES SHOULD BE MADE.

Order in which freehold and copyhold property, &c. should be placed when both are included in the same conveyance.

When freeholds and copyholds, or lands of any other tenure, are contained in the same deed,— as, for example, freeholds, leaseholds and copyholds,—the recitals relating to the freeholds should come first, then those relating to the leaseholds, and, lastly, the recitals affecting the copyholds. The same course should be pursued in the granting clause, by which the freeholds should be granted and released, the leaseholds assigned, and the copyholds be covenanted to be surrendered at the next court, with a declaration that the vendor will in the meantime stand seised or possessed of the same in trust for the vendor; but, if already surrendered, then the uses of the surrender only should be declared in the purchase-deed. The covenants for title of the freeholds and copyholds may be blended together, as, viz., that the vendor has good right to release the freeholds, to assign the leaseholds, and to surrender the copyholds, for quiet enjoyment of each, freedom from incumbrances, and for further assurance.

Ancient demise.

It is a very common practice to convey lands held in ancient demesne by lease and release, and also under the statute dispensing with a lease for a year: (4 & 5 Vict. c. 21.) It seems, however, that lands of the tenure of ancient

CHAP. XII.

How mixed assurances should be made.

demesne do not fall within the statute 8 & 9 Vict. c. 106, which renders it unnecessary to make any reference to the lease for a year; for, as a correspondent of the *Law Times* very properly remarks (vol. xiv., No. 358, p. 429), the words of the last-mentioned statute are confined to such corporeal hereditaments as regards the conveyance of the immediate *freehold* thereof; whereas it is quite clear, both upon principle and authority, that the *freehold* of lands in ancient demesne is in the lord, and for that reason the statute cannot comprehend a conveyance of lands of that tenure. Under these circumstances, it will be prudent either to convey in pursuance of the statute of 4 Victoria, and to refer to the lease for a year, or else to convey in the old form by lease and release, in all cases where the latter mode of assurance has been adopted in assurances of property of this description.

When copyholds are included in the same conveyance with other kinds of real property.

When copyholds are included in the same purchase-deeds with other kinds of real property, the uses of the copyholds may be declared either in the same deed of conveyance or by a distinct assurance. In some instances the latter mode is preferable, as the Stamp Act (55 Geo. 3, c. 184) provides that where any lands or other property of different holdings, or held under different titles, contracted to be sold at one entire price for the whole, shall be conveyed to the purchaser in separate parts or parcels, *by different deeds or instruments*, the purchase or consideration-money shall be apportioned in such manner as the parties shall think fit; so that a distinct price or consideration for each separate part or parcel may be set forth in or upon the principal deed or only instrument of conveyance relating thereto. By adopting a judicious apportionment of the purchase-money in conveyances of this kind the stamp duty may be considerably

How mixed assurances should be made.

reduced, as will be shown in the next section: (see the form, *infra.*)

It is not, generally speaking, advisable to include estates for years in the same deed with freehold estates; because, on the decease of the owner of the respective properties, they would devolve upon a different class of representatives, and be transmissible in a different course, when some difficulty and inconvenience might arise with respect to the possession of the title-deeds.

Not generally advisable to include estates for years in the same deed with freehold estates.

SECTION VI.

HOW THE ASSURANCE SHOULD BE PREPARED WHERE A MORTGAGE AND A PURCHASE ARE CONTAINED IN THE SAME INSTRUMENT.

Practical suggestions

It sometimes happens that part of the purchase-money is agreed to be permitted to remain on mortgage of the property sold. This object may be accomplished by a separate deed, or it might be included in the deed of conveyance; but in either case the same *ad valorem* duty will attach,—that is, the duty must be paid on the whole purchase money, and also on the whole sum expressed to be secured by way of mortgage. When both mortgage and sale were comprised in the same deed, the old practice was to create a term of years for that purpose, which was limited to the vendor by way of mortgage, and to limit the inheritance to the purchaser; but the practice now seems to be, to reassure the fee to the vendor for that purpose, a form of which is supplied in the Appendix. The deed, after reciting such matters as may be necessary to show the relation of the parties, should recite the contract for sale and the agreement that a portion of the purchase-money is intended to remain on mortgage; the parcels should then be conveyed to the purchaser, to hold to him and his heirs to the use of the vendor, the (intended mortgagee in fee), subject to redemption and reconveyance on payment of the mortgage money.

How assurance should be prepared.

with qualified covenants for title by the vendor to the purchaser, and with general covenants from the purchaser to the vendor for payment of the residue of the purchase-money, and for title, concluding with a covenant from the vendor that the purchaser shall enjoy until default. Powers of sale can be superadded to the redemption clause if required. The above mode of assurance may, with a slight variation, be adapted also to a sale and mortgage of copyholds. To accomplish this the purchased copyholds should be surrendered to a mutual trustee, in fee, in trust for the vendor, his heirs and assigns, subject to a proviso for redemption on payment of the sum secured by mortgage, and then the vendor should enter into qualified, and the purchaser into general, covenants, as in the case of freeholds.

SECTION VII.

DISENTAILING ASSURANCES.

Disentailing deeds and acknowledgments of married women.

BEFORE dismissing this part of our subject it will be proper to offer a few observations on the preparation of disentailing deeds and acknowledgments of married women, two modes of assurance which, as we have already seen, have been recently substituted in the place of fines and recoveries: (see *ante*, vol. i. p. 170, *et seq.*) In framing a disentailing assurance, when simply for the purpose of barring an entail, no recitals are necessary; but it is usual to introduce them, when, in addition to barring the entail, the instrument is also employed as a deed of conveyance to the purchaser. In the latter instance the assurance creating the entail should be recited, and the state of the title should be disclosed by the subsequent recitals.

How the instrument creating the entail should be recited.

For example; suppose a settlement to have been made previously to, and in contemplation of, the marriage of the father and mother of the tenant in tail, by which the property is limited to the father for life, remainder to trustees to preserve contingent remainders, with remainder to the first and other sons of the marriage in tail, with divers remainders over, with the ultimate reversion to the father in fee; and the father having died, his eldest son becomes tenant

in tail, and is desirous of barring such entail and to convey an absolute estate in fee simple. The marriage settlement should first be recited, then the marriage, next the death of the father, the tenant for life, then what issue he left, and that the tenant in tail has attained his majority, and has contracted to sell the entailed property.

Where the protector consents to the assurance.

If the estate tail is to be barred with the consent of the protector of the settlement, who takes a preceding life estate under it, which is intended to pass under the assurance, after introducing such recitals as are necessary to bring down the history from the time of settlement to the time of the assurance, it should be recited that the protector and the tenant in tail are desirous that the entail should be barred, and the property limited in fee-simple in manner thereinafter mentioned. The protector and tenant in tail should then, according to their respective interests in the premises, grant and release to the releasee, *habendum* to the releasee and his heirs, to the intended uses. If the protector only consents, but does not depart with his estate, then it will be sufficient to state that the tenant in tail, with the consent of the protector, grants and releases, &c., the protector's assent being sufficiently testified by the recital, and his execution of the deed. In case the protector refuses his consent, the tenant in tail may still bar his own estate tail, and thus create a base fee, which is capable of confirmation by him when there ceases to be a protector of the settlement, and which he may covenant to do at that time: (see the form, *infra*, Nos. 25, 26.) An estate tail may be barred either in the deed of conveyance to the purchaser, or by a distinct instrument; but the latter mode is generally preferred, unless the conveyance is a very short one, on account of the additional expense which would be incurred in enrolling a lengthy deed.

CHAP. XII.

Disentailing assurances.

Enrolment and registration.

In disentailing deeds and all instruments requiring enrolment, this should be done immediately after the execution; and where registration of an assurance is requisite, no time should be lost in doing this, otherwise, another having claim on the property might gain a priority, and it is also possible that a vendor might sell or take up money on a mortgage of the property to a *bonâ fide* purchaser or mortgagee, either of whom, if unaffected by notice, registering his conveyance first, would wholly supersede the former purchaser.

SECTION VIII.

OF THE EXECUTION AND ATTESTATION.

Of the requisites to the valid execution of a deed.

THE usual mode of executing a deed is for the party to sign his name close to the seal, and then, making an impression on the seal, to declare that he delivers the instrument as his act and deed in the presence of the witnesses; the latter of whom afterwards subscribe their names to a form of attestation indorsed on the deed, usually stating that the same is signed, sealed, and delivered by the conveying parties in their presence. But, notwithstanding that signing is the usual practice, it is not essential to the execution of a deed, although sealing is; because no writing without a seal can be a deed (3 Ins. 169; 3 Prest. Abs. 61; Perk. s. 129; Shep. Touch. 56); but even the Statute of Frauds does not render signing necessary to the validity of an ordinary deed; that statute applying only to mere agreements unattended with the solemnities of a deed: (3 Prest. Abs. 61.) Still, for all this, whenever the terms of a power prescribe signing, those terms must be complied with, otherwise nothing will be conveyed thereby.

What will be a sufficient sealing.

It is immaterial what kind of seal is employed; hence it is said, that if the party seal the deed with any seal besides his own, or with a stick, or any such like thing that doth make a print, it is good; and although it be a corporation that doth make the deed, yet they may seal with any other seal than their common seal, and the deed never the worse: (Perk. s. 130; Shep. Touch.

CHAP. XII. *Of execution and attestation.*

57.) And if there be twenty to seal one deed, it will be sufficient if they make distinct and several prints. But it seems, notwithstanding the contrary was once held (*Bull* v. *Dunsterville*, 4 T. R. 313), that a deed executed by one of two partners in the name of the partnership firm, will be considered merely as the deed of the executing party, and will not affect the interests of the other partners; for even a general partnership agreement, although under seal, does not authorize the partners to execute deeds for each other, unless a particular power is given for that purpose: (*Harrison* v. *Syke and Rushforth*, 7 T. R. 207.) It is not necessary that the deed should be sealed with wax; any article that will admit of an impression, as a wafer, or the like, will answer the same purpose.

Of the ceremonies to be observed in the delivery of a deed.

The author of the Touchstone remarks (p. 57), "that delivery is either actual, *i. e.*, by doing something or saying nothing, or else verbal, by saying something and doing nothing; or it may be by both. And either of these may make a good delivery and a perfect deed. But by one or both of these means it must be made; for otherwise, albeit it be never so well sealed and written, yet the deed is of no force." A third party may, however, be deputed to seal and deliver a deed, or it may be delivered to a third party who is a stranger to the deed, on behalf of the grantee. And where the person in whose name the deed is to be delivered by a third party is present at the time of the delivery, a mere verbal authority will be sufficient; but if the delivery is to take place in his absence, a power of attorney will become necessary; because a person cannot, unless authorized by *deed*, execute an instrument as the act of a person who is absent: (Shep. Touch. 58; 1 Ins. 52, a.) And when a deed is so executed by attorney, he ought to deliver it in the name and as the act and deed

of his principal (*Combe's case*, 9 Rep. 75; *Hawkins* v. *Kemp*, 3 East, 410); and should sign the deed with the name of his principal, either alone, or with the addition of, "*by C. D.* (*his own name*), *his attorney:*" (3 Prest. Abs. 67.) It is generally, however, considered that a purchaser is not bound to accept a title depending on a conveyance by attorney: (*Mitchel* v. *Neale*, 2 Ves. sen. 679.) But Mr. Preston observes that it may be questioned whether this objection will hold when the instrument containing the authority is delivered to the purchaser, and it is indisputable that the party was alive at the time of the execution by his attorney. "The decision," he adds, "goes no farther than to give to a purchaser, if he think fit, a right to have the deed executed by the party in person:" (3 Prest. Abs. 66.)

Act of sealing must precede the delivery.

The act of sealing must precede the delivery of the deed, otherwise nothing will pass by it; but it will be immaterial, if properly sealed and delivered, whether those acts be done before or after the day on which the instrument bears date. "For," says Sir E. Coke (4 Co. 46), "a deed takes effect by the delivery, and it is not material whether the delivery be before or after the date. If it is delivered before the date, and one of the parties dies before the date, yet the deed is good; for though the party is estopped to plead the deed to be delivered before the date, yet the jury may say the truth." A delivery may, however, be either absolute or conditional, that is, to the party or grantee himself; or to a third person to hold till some conditions be performed on the part of the grantee; in which last case it is not delivered as a deed, but as an escrow; that is, as a scrowl in writing, which is not to take effect as a deed till the conditions be performed; and then it becomes a deed to all intents and purposes: (Co. Litt. 36; 2 Bla. Com. 307; Shep.

CHAP. XII.

Of execution and attestation.

Requisites to the attestation.

Touch. 58, 59), as if it had been delivered immediately to the party to whom it is made: (Co. 3, 35; see also *Jennings* v. *Bragge*, cited 3 Rep. 35; *Periman's case*, 5 Rep. 84.)

One witness is sufficient to the execution of a deed; nor is it actually essential to its validity that such witness should subscribe his name to it, unless it be so directed by the terms of a power (3 Prest. Abs. 71); the object of having witnesses being rather for the purpose of preserving the evidence than for constituting the essence of the deed. In ancient times, indeed, the practice was to register in the deed the names of the persons who attended as witnesses, which was formerly done without the witnesses themselves signing the names (that, as Blackstone remarks (vol. 2, p. 307), not being always in their power), but they only heard the deed read; and then the clerk or scribe added their names in a sort of memorandum. This practice has been long since disused, and it seems that from as far back as the reign of King Henry the Eighth, down to the present time, the witnesses have subscribed their names, either at the bottom, or at the back of the deed: (2 Ins. 78; 2 Bla. Com. 308.) But notwithstanding a deed may not be actually invalid though there is no attestation indorsed upon it, yet no purchaser would, it seems, be compelled to take a title thus circumstanced; or, at any rate, until the execution is proved by some person who was present at the time, and witnessed the sealing and delivery. Questions of this kind are not likely, however, to arise very frequently at the present day, as every person now seems to be aware that one attesting witness is at least necessary to the validity of every deed, and that he should sign his name to it as such; so that it must be of very rare occurrence to find a deed of any kind

on which the names of the attesting witnesses are not duly indorsed. And in the case of ancient deeds, where the possession has gone accordingly, such possession is generally treated as satisfactory evidence of the due execution of the deed; and then the want of such attestation does not raise any objection to the evidence of title: (1 Prest. Abs. 276.)

SECTION IX.

COSTS.

Introductory observations.

In a former part of this treatise, we offered some suggestions relative to the costs of the different proceedings which take place in the course of a purchase, and of the propriety of stipulating by whom such costs should be defrayed; at the same time pointing out upon whose shoulders these burthens would fall, when no such stipulations were entered into. This topic was interspersed throughout various parts of the work in connexion with the several transactions to which it particularly related; but before dismissing this portion of our subject, it seems that a slight recapitulation will be advisable, for the purpose of bringing the whole of this important matter together, within one connected view.

Vendor must bear the expense of deducing his title, and purchaser the costs of the deed of conveyance.

With respect to the vendor, it appears that he will be bound to defray all the expenses incurred in making out and deducing his title to the purchaser; and also of obtaining the concurrence of the necessary parties, and all the incidental costs attendant upon the execution of the purchase-deed; but the expense of the preparation of the purchase-deed itself, as also of the stamps and parchment, must be paid by the purchaser.

Amount of vendor's expenses will depend upon the state of his title.

The amount of a vendor's expenses will be guided in a great measure by the state of his title. If the legal estate is vested in him or in parties whose concurrence can be readily ob-

tained, and there are no outstanding estates to be gotten in, or incumbrances to be discharged, and he has all the title-deeds in his possession, and these are all to be delivered over to the purchaser, then his expenses will be inconsiderable ; but in proportion as these essentials are wanting, so will his expenses be increased.

Vendor to be at expense of abstract.

A vendor is bound, at his own expense, to supply a purchaser with an abstract of all the title-deeds and documents necessary to support the title. Where these are numerous, the preparation of an abstract of them becomes a very expensive affair; but in many instances vendors have an abstract already prepared, or, at any rate, comprising the greater portion of the deeds, particularly where there have been any recent dealings with the property; for every purchaser, or mortgagee, expects to be furnished with an abstract as a means of aiding him in the investigation of the title, which abstract becomes his absolute property upon the completion of the purchase or mortgage: (*Roberts* v. *Wyatt*, 2 Taunt. 268.) Where, however, the property is sold in lots, each purchaser will be entitled to a distinct abstract, and this expense will fall upon the vendor; as will also the expense of attested copies, where he retains the title-deeds, or where they are delivered over to another purchaser: (*Dare* v. *Tucker*, 6 Ves. 460; *Berry* v. *Young*, 2 Esp. N. P. C. 640; see also *Bird* v. *Le Fevre*, 6 Ves. 460; *Boughton* v. *Sewell*, 15 *ib.* 176.)

In addition to this, a purchaser is entitled to a covenant, at the expense of the vendor, to produce the deeds themselves, at the expense of the purchaser, in support and manifestation of the title of the latter (Dix. tit. "Deeds," 245); for attested copies are mere waste paper for the purpose of defending the possession against strangers, being inadmissible in an action of ejectment, unless, perhaps, between the immediate

CHAP. XII. *Costs.*

parties: (*Berry* v. *Young*, 2 Esp. N. P. C. 640.) But a purchaser will not be entitled to attested copies of all the deeds mentioned in an abstract; but only so far back as is necessary to make a title: (*Dare* v. *Tucker*, *sup.*) Nor will a vendor, generally speaking, be obliged to be at the expense of furnishing attested copies of instruments of record, such as of fines or recoveries, or wills of real estate; or to require the vendor to enter into any covenant for the production of the originals.

But the vendor must procure attested copies of deeds of record, where such are necessary for the purpose of examining the abstract therewith; and which copies the purchaser will be entitled to have delivered over to him, together with the rest of the title-deeds, on the completion of the purchase, unless the vendor is entitled to retain the title-deeds themselves, in which case he must enter into the usual covenant for their production: (Dix. tit. "Deeds," 247.) Where the title-deeds cannot be delivered over, assignees of a bankrupt, like any other vendor, must furnish attested copies at the expense of the estate; but the covenant for their production should be confined to the continuance of their estates: (*Ex parte Stuart*, 2 Rose, 212.)

What courts are considered as courts of record.

Courts of record are said to be the High Court of Parliament, the Courts of Queen's Bench, and Common Pleas, at Westminster, the law sides of the Court of Chancery and Exchequer, the Court Leet, the Court of Hustings in the city of London, and the Court of Great Sessions in Wales: (Bart. Prec. Introd. 42; Dix. tit. "Deeds," 247.)

As to the covenant for the production of title-deeds.

With respect to the covenant for the production of title-deeds, Mr. Dixon, in his valuable Treatise on the Law relative to Title-Deeds, and other Documents, remarks, that "the modern practice, and the one generally recommended is, to have the covenant for the production of the

title-deeds entered into by a separate instrument. As these covenants are constructive notice of incumbrances, and, after a long interval, lead to an inquiry for deeds, &c., which have been converted into dust or ashes, the safe practice is, and it is the general practice in modern times, to take the covenant by a separate instrument; and cases exist in which it is prudent to take several deeds of covenant for the production of evidence of title, each deed containing a distinct series, so that one of the covenants may be given over to a future purchaser, without any notice of the deeds, which had better, even for the sake of such purchaser, be kept out of view: (1 Prest. Abs.) "But in such case the additional expense must be borne by the purchaser:" (and see also Bart. Prec. Introd. 88, 3rd edit.)

Where the abstract discloses a good title, purchaser must bear the expense of investigating it.

If the abstract shows a good title, the purchaser must pay the expenses of investigating it; but if the contract is rescinded for defect of title in the vendor, the purchaser will be entitled to the repayment of all reasonable expenses incurred by him in such investigation subsequently to entering into the contract: (*Hodges* v. *Litchfield* (*Lord*), 1 Bing. N. S. 492; *Wilde* v. *Forte*, 4 Taunt. 341; see also *Flureau* v. *Thornhill*, 2 W. Bla. 1078; *Camfield* v. *Gilbert*, 1 Esp. N. P. C. 221; *Richards* v. *Barton*, 1 Esp. N. P. C. 268; *Frühling* v. *Schroeder*, 2 Bing. 77.) But not, it seems, to expenses incurred previously, nor for the costs of a conveyance drawn by anticipation (*Hodges* v. *Litchfield*, *sup.*); nor to costs incurred in employing surveyors to survey and value the property.

Vendor must, at his own costs, procure the production of all deeds affecting the title.

If the title-deeds are not in the vendor's possession, he must, at his own expense, procure their production to the purchaser's solicitor, in order that they may be compared with the abstract, and this the vendor is bound to do; because the law supposes that every vendor has

CHAP. XII. *Costs.*

the title-deeds in his own hands, and in his power to produce: (*Rippingall* v. *Lloyd*, 2 Nev. & Man. 400.) And where any journeys become necessary for this purpose, the vendor must defray the expenses: (*Rawlings* v. *Vincent*, Carth. 124; *Boughton* v. *Jewell*, 15 Ves. 176; *Hughes* v. *Wynne*, 8 Sim. 85.) But where the title-deeds are in London, the practice is for the country solicitor to instruct his town agent to inspect the deeds there, and not put the vendor to the costs of his journey to town for that purpose.

When the vendor cannot produce originals, he must procure copies.

Where a vendor cannot produce the originals; as in the case of records and wills, he must obtain office copies or extracts of them, and this at his own expense, in order that the purchaser's solicitor may compare them with the abstract, and the vendor has no right, although willing to pay the expenses, to require the purchaser to send round to the different offices to examine the abstract with the originals, or with the records, even where such a course of proceeding will be permitted by the rules of such offices.

Vendor must defray the expense of getting in all outstanding estates.

The vendor must pay the costs of getting in all outstanding estates; and also of discharging all incumbrances, as mortgages, legacies, annuities, judgments, debts, and, in fact, every lien, charge or incumbrance, to which the property can be subjected; and also in procuring the concurrence of all necessary parties, for the purpose of conveying their estates, or releasing their claims or interests in the property.

A vendor must also be at the expense of obtaining the probate of any will, or letters of administration that may be required to substantiate the title; as also of the proof of all matters of fact necessary for that purpose, such as descents, births, marriages, deaths, intestacies, devises, vesting of terms of years, identity of parcels, and, indeed, of every fact and circumstance

necessary to elucidate the title, or to establish the identity of the property.

Attendant terms.

In the case of terms of years attendant upon the inheritance, the practice was for the vendor to be at the expense of deducing the title to the term, and for the purchaser to defray the expenses of assignment; but now, as all terms for years are made to cease when the purposes for which they were created are satisfied, both vendor and purchaser will be released from these costs for the time to come.

Vendor to defray the costs of barring entails.

Where it was necessary to bar an estate tail, the vendor was bound to pay the expenses of a recovery for that purpose, as he was the costs of a fine, where the concurrence of a married woman was necessary to enable her to convey her estate, or to release her right of dower, or any other claim she might chance to have upon the property; and now the vendor must defray the expenses of all disentailing deeds, and acknowledgments of married women, that may be required for the purpose of perfecting the title.

Vendor must be at expense where the legal estate is outstanding in infants or lunatics.

In case, also, the legal estate is outstanding in an infant or a lunatic, the vendor must be at the expense of all the proceedings necessary to procure their concurrence, or that of parties acting on their behalf.

Vendor must pay costs attendant upon execution of conveyance.

The vendor must be at the expense of the execution of the deed and of the attendance of all necessary parties for that purpose.

Contract, expense of, by whom defrayed.

With respect to the contract, if there be no stipulation or agreement to the contrary, it seems the costs must be paid by the client of the solicitor who prepares it.

Purchaser's solicitor the proper person to prepare the conveyance.

The purchaser's solicitor is entitled to prepare the conveyance, and the purchaser to pay the costs: (*Duke of Bolton* v. *Williams*, 2 Ves. 138.) And in the case of copyholds, the purchaser must pay the expenses of surrender and admission: (*Drury* v. *Mann*, 1 Atk. 96, note 1.) And

even, as we have already seen (*ante*, vol. i., p. 35), although a vendor of copyholds covenants to make the surrender at his own costs, he will not be bound to pay the fine on the admission of the purchaser.

As to the charges for the conveyance.

According to a long established rule of practice, the rate at which purchase-deeds and other assurances were charged, was by the folio; the costs of the deed being proportioned to the length it ran. This was considered by many to afford an inducement to the profession to be far more prolix in legal documents than there was any necessity for; and taking this view of the matter, an act of Parliament was not long since passed materially altering the rules with respect to charges on conveyances (8 & 9 Vict. c. 119), by enacting that the charges shall not be proportioned to the length of the instrument, but to the skill and labour employed, and the responsibility incurred in preparing it (sect. 4), which certainly introduces a vast degree of uncertainty, although it has not materially altered the course which has latterly been pursued amongst the most respectable of the profession, which has been to charge for the whole transaction in proportion to the value of the property purchased, or in the case of a mortgage to the amount of money advanced; and in small purchases or mortgages curtailing the instrument within the narrowest possible limits, in order to save an unnecessary expenditure in stamp duty.

8 & 9 Vict. c. 119.

Costs upon actions at law and in proceedings in equity will form a subject of our consideration, when we come to treat upon the remedies for breach of contract.

CHAPTER XIII.

REMEDIES FOR BREACH OF CONTRACT.

I. When the Contract may be Rescinded.

II. Remedies for Breach of Contract at Law.

1. *As to the Vendor.*
2. *As to the Purchaser.*

III. Remedies in Equity.

I. When the Contract may be Rescinded.

Introductory observations.

We have hitherto treated of the progress of a sale of real property through all its intermediate stages, from the time of entering into the contract, to the execution of the conveyance: and it now remains for us to consider what steps are to be taken, when the contract is either annulled by consent of the parties, or any impediment arises, which hinders it from being specifically performed.

How a contract may be rescinded.

A contract to purchase real property may be rescinded at any time before its completion by the mutual consent of the parties concerned, and upon this a question rarely arises. Where the difficulty occurs, is, where one party wishes to be off his bargain, and the other wishes to hold him to it; and then it becomes a very important question whether or not the agreement may be

CHAP. XIII.

As to rescinding contract.

annulled, or a performance of it specifically enforced.

Usual grounds for annulling contract.

The usual ground for annulling the contract on the part of the purchaser, is, the inability of the vendor to make a good title; and, on the part of the vendor, that the purchaser is not ready to complete his purchase within the time prescribed by the contract, or has by his laches precluded himself from any right to insist upon a specific performance.

Where time is made the essence of the contract.

Time may now be made the essence of the contract, in equity, as well as at law (see vol. i. p. 105, and the cases there referred to); and where the contract or conditions of sale are so penned as to have this operation (see the form *ante*, vol. i. p. 121), the vendor will, immediately upon breach of such condition, be entitled to annul the sale, resell the property, and recover any deficiency in price that may be incurred upon such resale, and all incidental expenses, from the purchaser, and will also be entitled to retain the overplus money, in case the proceeds of the second sale, should exceed the original purchase-money: (*Merlins* v. *Adcock*, 4 Esp. N. P. C. 251; *Moss* v. *Mathews*, 3 Ves. 276; *Ex parte Hunter*, 6 *ib.* 95; *Bowles* v. *Rogers*, *ib.* cited.) In addition to this, he may bring his action at law for damages, or file his bill in equity for a specific performance.

Where time is not made the essence of the contract.

Where time is not originally made part of the essence of the contract, it seems doubtful if any subsequent notice or intimation of the parties can render it so. In *Reynolds* v. *Nelthorpe* (6 Mad. 18), Sir John Leach, V.-C. said, that it may now be considered the settled doctrine of the court, that by the terms of the agreement time may be made the essence of the contract. It has not, however, been decided, that where there is no stipulation in the contract, time may be made essential by subsequent notice; and he added,

As to rescinding contract.

that in the case then before him, he should leave that point untouched. Neither, it seems, has it ever been determined how long a period may be permitted to elapse, where time is not the essence of the contract, before it will afford sufficient ground for rescinding the contract by one party, on account of non-performance by the other. Thus much, however, appears certain, that equity will assist no one who has not shown himself desirous, prompt, eager, and at all times ready to complete his bargain (*Wingfield* v. *Whaley*, Vin. Abr. tit. "Contract," c. 36; Dom. Proc. 13 March, 1722; *Hayes* v. *Caryl*, Dom. Proc. 26 Jan. 1702, mentioned in Grounds and Rudiments of Law and Equity 18; see also 1 Mad. Pract. 416; *Milward* v. *Thanet* (*Earl of*), 5 Ves. 720, n.; *Hertford* (*Marquis of*) v. *Bone*, 5 Ves. 720, n.; *Newman* v. *Rogers*, 4 Bro. C. C. 391; *Moore* v. *Blake*, 1 Ball & B. 62; *Ormond* (*Lord*) v. *Anderson*, *ib.* 370; *Alley* v. *Deschampes* 13 Ves. 228); for a court of equity always discountenances laches and neglect: (*Lloyd* v. *Collet*, 4 Bro. C. C. 469; *Alley* v. *Deschampes*, *supra.*)

Usual grounds for purchasers annulling sale.

The usual grounds assigned by a purchaser for rescinding a contract are, either that the vendor has not the interest he pretended to sell; that the property has been misdescribed; that there is a defect in quantity of the estate; that there was a total or partial failure of consideration, or material alteration, in the property, by the acts of the vendor, subsequent to the contract; or, an inadequacy of consideration.

Where vendor has not the interest he pretended to sell.

Where the vendor has not the interest he pretended to sell, as where he contracts to sell a freehold estate, which turns out to be leasehold, it will afford sufficient ground for the purchaser to rescind the contract in equity, as well as at law. But, although a purchaser may annul the sale for any of the above causes, he has also a right, if he thinks proper, to insist upon the

CHAP. XIII.

As to rescinding contract.

vendor's completing the purchase, and allowing him an abatement out of purchase-money, to make up for the difference in value between the property contracted for, and the interest which the vendor really has the power to convey. In cases of this kind, therefore, the purchaser may either hold the vendor to his bargain, or annul the sale, but the vendor can do neither. Nor is it even necessary to show fraud on the vendor's part; for it will make no difference, even if it should appear that he himself may have been deceived as to the true nature of the property he proposed selling: (see vol. i. p. 22, *et seq.*) But in certain cases, where the misdescription is not in the tenure, but in the duration of interest; as where a vendor contracts to sell a term of twenty years in certain premises, and it should turn out that he had only eighteen, or nineteen years unexpired, although this will afford sufficient cause for totally annulling the agreement at law, yet in equity, where there is no great difference between the duration of interest pretended to be sold, and that which the vendor actually has in the property, a specific performance will be decreed with a compensation: (see vol. i. pp. 25, 26.) It seems difficult, however, to lay down any rule as to what degree of deficiency would be sufficient to annul the sale, and what would not; still, it seems that where the disproportion is very great, as where a person pretends to sell a term of sixteen years, when, in point of fact, six years only are unexpired, a court of equity, so far from assisting him by decreeing a specific performance, would assist a purchaser in recovering back any deposit the latter may have paid: (*Long* v. *Fletcher*, 2 Eq. Cas. Abr. 5.)

A purchaser cannot be compelled to take an underlease, even with a compensation, where the agreement was for an original lease, although the former wants only a few days of the original

As to rescinding contract.

term: (*Mason* v. *Corder*, 2 Marsh. 332.) Nor where he contracts to purchase an estate tithe-free, or with a right of shooting, can he be compelled to complete his purchase, even with a compensation, if it should turn out that the estate is not tithe-free (*Ker* v. *Clobery*, Chan. 26 March, 1814; *Binks* v. *Rokeby* (*Lord*), 2 Swanst. 222; *Norfolk* (*Duke of*) v. *Worthy*, 1 Camp. N. P. C. 337), or that such right of shooting cannot be conferred upon him.

Where vendor can only confer a title to a portion of th property.

It sometimes happens, that where property is sold in lots, a vendor is unable to make a good title to the whole of them, though he can do so to part, upon which a question has arisen, as to whether a purchaser of these lots can be compelled to complete his purchase as to the lots to which a title can be made, and to receive a compensation by a proportionate abatement of purchase-money for the others; or whether it will afford him a sufficient ground for rescinding the contract altogether.

If a title cannot be made to a lot complicated with the rest, purchaser may rescind sale.

The rule, however, appears to be, that if a title cannot be made to a lot complicated with, and essential to, the enjoyment of the rest, a purchaser will be entitled to rescind the contract *in toto*, as well at law, as in equity. For example, where one agrees to purchase a mansion-house in one lot, and farms and lands in another lot, and no title can be made to the mansion-house, the purchaser would not be compelled to take the farms and lands without the mansion-house: (*Poole* v. *Shergold*, 1 Bro. C. C. 118; S. C. 1 Cox, 273; see also *Boyer* v. *Blackwell*, 3 Anstr. 657; *Drewe* v. *Hanson*, 6 Ves. 657.) In one case, indeed, it seems that Sir Thomas Sewell held, that where a man contracted for the purchase of a house and a wharf, he should be compelled to take the house, notwithstanding no title could be made to the wharf, the possession of which, it appeared, was the sole inducement

CHAP. XIII.

As to rescinding contract.

for the purchaser's entering into the contract, his object being to carry on his business there: (see 6 Ves. 678.) But this decision has met with universal disapprobation. Lord Kenyon, when alluding to it (2 Cox, 274), pronounced it to be a determination contrary to all justice and reason; and Lord Eldon has expressed his strong disapproval of it (*Stewart* v. *Alliston*, 1 Mer. 26); so that it is a decision by no means likely to be followed at the present day. And this equitable construction has even been adopted in courts of law: for, notwithstanding it is a settled rule of law, that the sale of each lot forms a distinct subject-matter of contract (*Emerson* v. *Heelis*, 2 Taunt. 38; *James* v. *Shore*, 1 Stark. N. P. C. 426; *Roots* v. *Dormer* (*Lord*), 4 B. & A. 77; *Dykes* v. *Blake*, 4 Bing. N. C. 463), still, a court of law will permit a purchaser to decline the bargain to all the lots, if no title can be made to such lots as are essential to the enjoyment of the rest: (*Gibson* v. *Spurrier*, Peake Ad. Ca. 49; *Dykes* v. *Blake*, 4 Bing. N. C. 463.) But from this it must not be inferred, that the mere inability of the vendor to make a good title to all the lots, will afford a sufficient ground for a purchaser to be off his bargain as to the others. To enable him to do so, he must bring himself within the rule laid down in *Poole* v. *Shergold*, and show that the lot or lots to which no title can be made, are complicated with, or absolutely essential to the enjoyment of, the rest, otherwise he will be held to his purchase (*Casamajor* v. *Strode*, 2 Myl. & Keen, 724), except he can show that there was an express understanding that he was not to take any of the lots, unless he could have the whole, or that he has been misled by a wilful misdescription of the property: (*Dykes* v. *Blake*, *supra*.)

Wilful misdescription will vitiate sale.

Where the property is wilfully misdescribed, either in the contract, or in the conditions of sale,

As to rescinding contract.

the purchaser may rescind the contract, and cannot be compelled to a specific performance with a compensation: (*Stewart* v. *Alliston*, 1 Mer. 26; *Waring* v. *Hoggart*, R. & M. 40; *Norfolk* (*Duke of*) v. *Worthy*, 1 Camp. N. P. C. 337; *Vernon* v. *Keys*, 12 East, 637; *Jones* v. *Edney*, 3 *ib.* 285; *Flight* v. *Booth*, 1 New Cas. 370; *Robinson* v. *Musgrove*, 2 Mood. & Rob. 92; *Ballard* v. *Way*, 1 Mee. & Wels. 520; *Dobell* v. *Hutchinson*, 3 Ad. & Ell. 355; *Dykes* v. *Blake*, 4 Bing. N. C. 463.) But not, it seems, if the purchaser was aware that the description was a false one; for then it seems that not only would a court of equity refuse to interpose in his favour, but he could not take advantage of this misdescription even at law. A fraudulent misrepresentation on the part of a purchaser, by which a vendor has been induced to sell at an under value, may afford ground for a vendor to rescind the contract, or, at any rate, would afford a defence to a bill for a specific performance; for a party calling for the aid of a court of equity must come, it is said, with clean hands (*Cadman* v. *Horner*, 18 Ves. 11); it being a maxim of equity that he that hath committed iniquity shall not have equity: (Francis's Max. 5; 1 Mad. Pract. 404; see also *Harnett* v. *Yielding*, 2 Sch. & Lef. 553; *Wall* v. *Stubbs*, 1 Mad. 80; *Shirley* v. *Stratton*, 1 Bro. C. C. 440; *Oldfield* v. *Round*, 15 Ves. 11; *Lowndes* v. *Lane*, 2 Cox, 363.)

Defect in quantity will afford ground for rescinding contract.

A wilful misdescription of the quantity of acres, would, it seems, afford a purchaser a ground for rescinding the contract; unless, indeed, he purchased at so much per acre; in which case he would be allowed a proportionate abatement for the deficiency. But a purchaser has been held not to be entitled to an abatement for a deficiency in the quantity of acres sold, where the particulars described the estate as containing, by estimation, so many acres, "*be the same more or*

CHAP. XIII.

As to rescinding contract.

less:" (*Winch* v. *Winchester*, 1 Ves. & Bea. 375.) Still, if it should appear that these words were inserted with a fraudulent intent, to cover a deficiency in quantity, and of which the vendor was aware, a court of equity will not permit the words "more or less," or similar expressions, to protect a fraudulent statement of this nature: (*Norfolk* (*Duke of*) v. *Worthy*, 1 Camp. N. P. C. 337.) Until the recent enactment, 54 Geo. 4, c. 2, a contract to convey any specific number of acres would have been taken to imply acres so considered according to the custom of the country in which such lands were situate, and not according to the statute measure: (*Some* v. *Taylor*, Cro. Eliz. 665; *Morgan* v. *Tedcastle*, Poph. 55; *Floyd* v. *Bethel*, 1 Roll. Rep. 520.) But now, by the act above alluded to, where any special agreement shall be made with respect to any measure established by local custom, the ratio, or proportion which every such local measure shall bear to any of the said standard measures, ascertained and specified by that act, shall be expressed, declared, and specified in that agreement, otherwise such agreement shall be null and void: (sect. 15.)

Failure of consideration or alteration of the property.

We have already seen that the destruction of the property, subsequent to the agreement, and previous to the conveyance, will not release the purchaser, or afford any ground for rescinding the contract: (see *ante*, p. 17.) But if a vendor, subsequently to entering into the contract, effects any material alteration in the property, which is not properly a subject of compensation, the purchaser may rescind the contract. Even pulling down a summer-house on the property, after the contract was entered into, though no mention of it was made in the conditions of sale, was considered to afford sufficient cause for the purchaser to rescind the contract: (*Granger* v. *Worms*, 2 Camp. N. P. C. 83.) The act of cutting down

As to rescinding contract.

ornamental timber will also form sufficient ground for the purchaser to annul the contract; but not the cutting down of ordinary timber, as in the latter instance it will be considered that the consequential injury the purchaser has thereby sustained may be made good to him by pecuniary compensation: (*Magennis* v. *Fallon*, 2 Moll. 588.)

Inadequacy of price not generally a sufficient ground for rescinding the contract.

Inadequacy of price will not, generally speaking, be sufficient to prevent a court of equity from decreeing a specific performance in favour either of vendor (*City of London* v. *Richmond*, 2 Vern. 421; *Hanger* v. *Eyles*, 2 Eq. Ca. Abr. 689; *Hicks* v. *Phillips*, Pre. Cha. 575; *Charles* v. *Andrews*, 9 Mod. 151; *Lewis* v. *Lechmere*, 10 Mod. 503; *Saville* v. *Saville*, 1 P. Wms. 745; *Keene* v. *Stukeley*, 2 Bro. C. C. 396; *Adams* v. *Weare*, 1 Bro. C. C. 567), or purchaser: (*Coles* v. *Tregothic*, 9 Ves. 234; *Burrowes* v. *Lock*, 10 *ib.* 470; *Lowther* v. *Lowther*, 13 *ib.* 95; *Weston* v. *Russell*, 13 Ves. & Bea. 187.

In the case of fraudulent misrepresentation equity will not compel a specific performance.

But where it has been caused by any fraudulent misrepresentation of the other party, or the grossness of the inadequacy is such as to be of itself evidence of fraud, equity would not compel a performance in specie: (*James* v. *Morgan*, 1 Lev. 111; *Dean* v. *Rastron*, 1 Anstr. 64; *Conway* v. *Shrimpton*, 5 Bro. P. C. 187; *Buxton* v. *Cooper*, 3 Atk. 383.

Puffing will vitiate sale if fraudulently made.

So if a vendor employs puffers at an auction for the purpose of screwing up the price, a purchaser may decline to complete his purchase: (*Howard* v. *Castle*, 6 T. R. 642; *Wheeler* v. *Collier*, 1 Moo. & Malk. 113; *Rex* v. *Marsh*, 3 You. & Jerv. 331; *Crowder* v. *Austen*, 3 Bing. 368; Selw. N. P. 174.) The rule, however, as to puffing does not, it must be observed, extend to those cases where an owner fairly bids, either by himself or an agent, having previously given notice of his intention to do so: (*Jones* v. *Edney*, 3 Camp. N. P. C. 383); but a vendor will not

CHAP. XIII.

As to rescinding contract.

be allowed to employ any person to bid on his behalf where the estate is advertised to be sold "*without reserve*;" and, if he were to do so, it would afford sufficient ground for annulling the sale.

Dealings with expectant heirs.

Sales by expectant heirs are, with a view to prevent fraud, considered in a different light from sales by other persons: (*Peacock* v. *Evans*, 16 Ves. 512; *Gowland* v. *De Faria*, 17 *ib.* 20.) The heir of a family dealing for an expectancy in that family, is distinguished from ordinary cases, and an unconscionable bargain made with him, is looked upon as oppressive and pernicious in principle, and therefore, to be repressed: (1 Mad. Pract. 118.) On these principles, where a son who, after his father's death, was a remainder-man in tail, sold his remainder at an under-rate, it was set aside: (*Twiselton* v. *Griffiths*, 1 P. Wms. 310; *Wiseman* v. *Beake*, 2 Vern. 121.) Still an expectancy may be sold, provided it is sold fairly: (*Nott* v. *Hill*, 1 Vern. 168; S. C. 2 Cha. Rep. 120; *Barney* v. *Beake*, *ib.* 136; *Batty* v. *Lloyd*, 1 Vern. 141.) And it has also been held, that where a reversionary interest is sold by auction, the purchaser is not bound to show that he has given the full value: *Shelley* v. *Nash*, 3 Maddock, 232.) An eminent writer on equity observes, that the tendency of the determinations to render all bargains with expectant heirs very insecure, if not impracticable, seems not to be considered as operating to prevent its adoption and establishment; but that, on the contrary, some judges had avowed that probable consequence as being to them a recommendation of the doctrine: (1 Mad. Pract. 120, referring to *Peacock* v. *Evans*, 16 Ves. 514.)

How the right of rescinding a contract may be lost.

Whatever right a party may have to rescind a contract, he may lose that right by his subsequent acquiescence or confirmation: (*Chesterfield* v. *Janssen*, 1 Atk. 301; see also *Cole* v. *Gibbons*,

As to rescinding contract.

3 P. Wms. 290.) Where, therefore, time forms part of the essence of the contract, that time may even at law, be enlarged by the consent of the parties; and in all cases if a party with full information confirms a contract which it was in his power to have rescinded, he will be bound by such confirmation. So, if instead of repudiating the transaction, he continues to deal with the property as his own, it seems that he will be bound, notwithstanding he should afterwards discover a new circumstance of fraud; for that, although it may be considered as strengthening the evidence of the original fraud, it will still be insufficient to revive the right of repudiating the contract after it has been once waived: (*Campbell* v. *Fleming*, 1 Ad. & Ell. 40.) But if the confirmation is not freely given (*Crowe* v. *Ballard*, 1 Ves. 215; S. C. 3 Bro. C. C. 117; 2 Cox, 253; 1 Mad. Pract. 122; Ball & B. 217; and see *Cann* v. *Cann*, 1 P. Wms. 723), or the contract itself be founded on fraud or oppression, or the party be distressed, or under the influence of the former transaction, and not fully apprized of his rights (*Dunbar* v. *Tredennick*, 2 Ball & B. 217; and see *Cann* v. *Cann*, 1 P. Wms. 723), and that his act will operate as a confirmation, a confirmation thus obtained, will not debar him of equitable relief and protection: (*Murray* v. *Palmer*, 2 Sch. & Lef. 486; and see *Crowe* v. *Ballard*, 1 Ves. 215; S. C. 3 Bro. C. C. 117, 2 Cox, 253; *Roche* v. *O'Brien*, 1 Ball & B. 319; 1 Mad. Pract. 122; *Coles* v. *Tregothic*, 9 Ves. 246; *Morce* v. *Royall*, 12 Ves. 364.)

SECTION II.

REMEDIES FOR BREACH OF CONTRACT AT LAW.

1. *As to the Vendor.*
2. *As to the Purchaser.*

1. *As to the Vendor.*

Usual remedies of a vendor for breach of contract.

THE vendor's most usual legal remedy for a breach of contract affecting real property is by action of *assumpsit* for the purchase-money, and where a certain sum is stipulated to be paid by the defaulting party, in the shape of a penalty, or by way of liquidated damages, he may resort to an action of debt for recovery of the same; and if, as sometimes happens, the parties bind themselves by agreement under seal, the proper remedy will be by action of covenant. Added to these remedies, the vendor, if he has been prevented from selling his property on account of his title having been slandered, he may bring his action on the case for consequential damages. The purchaser's legal remedies are special action on the contract; for money had and received, to recover the deposit; *assumpsit*, or debt, where the parties bind themselves to pay liquidated damages, or penalties in default of fulfilling the contract; as also an action of covenant, if the agreement is under seal. Added to these several remedies, he may also maintain an action on the case, in the nature of deceit, where the vendor has made any fraudulent

misrepresentation, or concealment, by which he has been deceived as to the true value and nature of the property.

To support an action of *assumpsit* for the recovery of the purchase-money, the vendor must prove a complete and valid agreement within the Statute of Frauds, which agreement must be duly stamped, otherwise it cannot be admitted in evidence; unless, indeed, it happens that the stamped agreement is in the hands of the opposite party, who, upon notice, refuses to produce it, in which case secondary evidence may be received of its contents: (*Garnons* v. *Swift*, 1 Taunt. 507: see also *Waller* v. *Horsfall*, 1 Camp. N. P. C. 501.) The vendor must also prove the performance of all conditions precedent on his part; the defendant's default; and that the plaintiff has a good title to the property contracted for.

Assumpsit for the purchase-money.

To support this action the vendor must, as I have just before stated, prove the performance of all precedent conditions on his part, or a tender and refusal on the part of the defendant; upon which ground it has been held, that a vendor cannot recover in this form of action without having executed the conveyance, or offered to do so; unless the purchaser has discharged him from so doing: (*Jones* v. *Barklay*, Doug. 684; *Phillips* v. *Fielding*, 2 H. Black. 123.)

All conditions must be performed.

Thus in *Woodrow* v. *Glazebrook* (6 T. R. 666), where the plaintiff agreed to sell a schoolhouse to the defendant, and to convey the same to him before the 1st of August, 1797, and to deliver up the possession to him on the 1st of August, 1797, it was held that the plaintiff could not maintain the action for the 120*l.*, without showing that he had conveyed, or tendered a conveyance, to the defendant.

Woodrow v. *Glazebrook.*

In *Spiller* v. *Westlake* also (2 B. & Ad. 155), where A. covenanted that he would, on or before a certain day, convey land to B. by such convey-

Spiller v. *Westlake.*

ance as B.'s counsel should advise, in consideration of which B. covenanted to pay a certain specific sum on the execution of the conveyance, it was holden that A. could not maintain an action against B. for non-payment of the money, without showing that he had conveyed, or that he was ready at the day to have conveyed, and had done every thing which lay upon him to do for that purpose, but that he was prevented from so doing by some act, omission, or neglect on the part of the defendant.

What acts by plaintiff will be considered as equivalent to performance.

Yet, where the defendant himself prevents such performance, then what the law considers as equivalent to performance will suffice; as, where a vendor tenders a draught of the conveyance to the defendant, and offers to deliver and execute the same to him, but the latter discharges the vendor from so doing. It will be necessary, however, that this should be averred in the declaration, and proved at the trial of the cause; and the refusal, as well as the tender, must be averred and proved: (*Jones* v. *Barklay*, Doug. 684; *Wilmot* v. *Wilkinson*, 6 B. & C. 506.) A tender and refusal are deemed equivalent to performance, but a tender without refusal is not so considered: (*Lee* v. *Exelby*, Cro. Eliz. 888; Selw. N. P. 115, 9th edit.)

Plaintiff must be able to show a good title.

The plaintiff must also be armed with proof that he has a good title to the property; for it will not be sufficient for him to allege that he has been *always ready and willing*, and frequently offered, to make a good title to the estate on payment of the purchase-money (*Phillips* v. *Fielding*, 2 H. Black. 123; Selw. N. P. 115, 9th edit.), but he ought to aver that he actually made a good title, or a tender and refusal, and he ought to show what title he has: (*Ib.*) But where the plaintiff alleged in his declaration that he was seised in fee of the lands in question, and that the defendant agreed to purchase *on having a good*

title, and then averred that the title to the land *was made good, perfect, and satisfactory* to the defendant, it was holden that it was not necessary for the plaintiff to set forth in the declaration all the particulars of his title, and that the averments in the present case were sufficient to enable the plaintiff to call upon the defendant for the non-execution of his part of the agreement: (*Martin* v. *Smith*, 6 East, 555.)

Evidence of title.

Where the plaintiff produces his title-deeds in support of his title, it is not yet satisfactorily determined whether the fact of execution should be proved by the evidence of the subscribing witnesses. In *Thompson* v. *Miles* (1 Esp. N. P. C. 185), Lord Kenyon, C. J., ruled that it was unnecessary to call the subscribing witnesses; and he also added that he would never allow parties to be called upon to prove the execution of all the deeds deducing a long title; that such was never mentioned in the abstract, or expected in making out the title in any case of a purchase, more particularly where possession had accompanied them; he therefore admitted the deeds without any proof of execution. The contrary was, however, held in *Crosby* v. *Percy* (1 Camp. N. P. C. 304), and it was there held to be necessary for the plaintiff to prove the execution of title-deeds; and where a tenant who sold a lease had protected himself by the conditions of sale from being called upon to produce any title prior to the lease, it was held that he was required to prove the execution of the lease itself by calling the attesting witness. The ground of the determination in the latter case seems to have been, that the plaintiff having declared that he was *possessed of a lease*, was bound to prove that allegation in the ordinary manner: (*Laythorp* v. *Bryant*, 1 Bing. N. C.) And it was also said there was no necessity to decide the point discussed in *Thompson* v. *Miles* and *Crosby* v.

CHAP. XIII.

As to remedies for breach of contract.

Percy; cases which Parke, J., declared most unsatisfactory. In this uncertain position, therefore, the question still remains. It seems, however, to be settled that if a purchaser has not made an application for the title before the action is commenced, he will not be allowed to set up a want of title in the plaintiff, though the plaintiff could not have conferred it till after the action brought, it having been solemnly adjudged, that if a party sells an estate without having a title, but before he is called up to make a conveyance he gets such an estate as will enable him to make a title, it is sufficient: (*Thompson* v. *Miles*, *supra;* see also *Wilde* v. *Forte*, 4 Taunt. 336; *Bartlett* v. *Tuchin*, 7 Taunt. 259.)

Defence.

The most common defence to this action is defect of title in the vendor, under which defence, equitable as well as legal objections may be taken; nor will the plaintiff be entitled to recover unless he can show a good equitable as well as a good legal title to the property: (*Elliott* v. *Edwards*, 3 Bos. & Pull. 181; *Maberly* v. *Robins*, 5 Taunt. 625.) Nor where the property is leasehold can the vendor sustain this action unless he can show a good title in his lessor: (*Jouter* v. *Drake*, 5 B. & Ad. 992; Selw. N. P. 180.) Refusal on the part of the vendor to convey, will also form a sufficient answer to this action.(*a*) Another ground of defence is, that there has been a fraudulent misdescription by the vendor, either as to the extent or value, or in both; or that the property is subjected to burdens and outgoings, or clogged with covenants or conditions not men-

(*a*) This will not, however, be a sufficient ground of defence to an action for a bill of exchange accepted by the defendant by way of payment, whose remedy in a case of this action must either be by cross action, or by filing a bill in equity against the vendor: (*Moggridge* v. *Jones*, 14 East, 486; see also *Morgan* v. *Richardson*, 1 Camp. N. P. C. 40; Selw. N. P. 168, n. 9th edit.)

tioned in the contract or conditions of sale; or that there has been a fraudulent concealment of defects, done with the express view of deceiving a purchaser; or that the property has undergone some material alterations by acts of the vendor, since the contract was entered into, of which no notice has been given to the purchaser, or which has even been unnoticed in the contract or conditions of sale: any one of which circumstances is a bar to the action. So, the fact of a life having dropped, in the case of a sale of leaseholds determinable on lives, unnoticed by the conditions of sale, will afford sufficient ground for a purchaser to rescind his contract, notwithstanding the auctioneer may have mentioned that circumstance at the time of sale; for the conditions are the terms by which the sale is to be governed, and, as we have already seen, cannot be varied by parol declarations: (*ante*, vol. i. p. 11.)

Action for use and occupation.

Where a purchaser has entered on premises under a contract to purchase them, but which contract goes off without any default on the part of the vendor, if such occupation has been a beneficial one, the vendor may maintain an action for such use and occupation (*Hill* v. *Vaughan*, Peake, N. P. C. 245); but it seems only for the period since the putting an end of the contract. (*Ib.*; and see *Hearne* v. *Tomlin*, Peake, N. P. C. 192.) Possession delivered to a purchaser upon a treaty for the purchase, does not constitute him a tenant to the lessor, as no such implication can arise from circumstances, the occurrence of which neither of the parties had in their contemplation: (*Kirtland* v. *Pounsett*, 2 Taunt. 45.)

When a vendor is restrained by a court of equity from proceeding at law.

When a bill for a specific performance is dismissed for defect of title in the vendor, the court will generally grant an injunction to restrain the vendor from proceeding by action at law for breach of the contract (*McNamara* v. *Arthur*, 2 B. & B. 349; 1 Mad. Pract. 136, 2nd edit.);

CHAP. XIII.

As to remedies for breach of contract.

but this will not be granted in every instance; for cases not unfrequently occur, in which, though the court declines to enforce a specific performance, yet whilst it dismisses the bill, the decree expressly declares that it shall be without prejudice to the vendor's legal remedy, where it appears to the court that he really has a legal remedy to resort to.

Action for slander of title.

Besides the legal remedies, we have already noticed, a vendor has also a remedy by action against parties who, by slandering his title, prevent him from selling his estate; as by stating that the issue in tail or a person taking lands by descent, is a bastard, who, if such were true, would thereby be rendered incapable of inheriting them : (3 Bla. Com. 123; Cro. Jac. 213 ; Cro. Eliz. 197 ; *Lowe* v. *Harewood*, Sir W. Jones, 196; recognized in *Malachy* v. *Solper* 3 Bing. N. C. 383; S. C. 3 Scott, 736.) But in cases of this nature, it is incumbent on the plaintiff, not only to state and prove the speaking of the words, but also the particular injury which he has sustained in consequence; because the words not being actionable in themselves, the special damage sustained must form the gist of the action, which must be alleged, and also proved at the trial of the cause : (*Hargrave* v. *Le Breton*, 4 Bur. 2422; *Smith* v. *Spooner*, 3 Taunt. 246; *Pitt* v. *Donovan*, Mau. & Selw. 369; *Watson* v. *Reynolds*, 1 Mood. & Malk. 1.)

Requisites to support an action for slander of title.

To maintain this action, there must be malice, either express or implied (*Hargrave* v. *Le Breton*, *supra*); for if a person think he has a right to the property, which in fact he has not, the assertion of that claim, however publicly done, will not support an action of this kind. Thus, in *Smith* v. *Spooner* (5 Taunt. 246), where a person supposing he had a right to recover possession of a term for some misconduct of his tenant, and hearing that the term was to be sold,

went to the auction, and said that the vendor could not make a title to it, it was holden that did not afford sufficient ground for an action, there being no proof of malice. Nor is the attorney of a party claiming title to premises put up for sale liable to an action for slander of title, if he, *bonâ fide*, though without authority, makes such objections to the seller's title as his principal, if present, would have been authorized to make: (*Watson* v. *Reynolds*, *supra*.)

2. *As to the Purchaser.*

Special action on the contract.

To maintain this action, the plaintiff must prove the contract, and the performance on the part of himself of all conditions precedent; the incapacity or refusal on the part of the defendant to complete the contract; and when he seeks to recover the deposit, that he has actually paid such deposit to the defendant.

Proof of the contract.

The contract must be shown by the production of the instrument itself, and the signature of the contracting parties must also be proved. The instrument also must, as we have already seen, be duly stamped before it can be received in evidence, unless, indeed, one part only of it be stamped, and this is in the hands of the opposite party, who, upon notice, refuses to produce it; for then the unstamped part may be received as secondary evidence of the agreement: (*ante*, vol. i. p. 110.) And notwithstanding the deposit cannot be recovered in this form of action, where the contract cannot be proved, as must always occur in the case of mere parol agreements, the sum actually paid as such deposit may, nevertheless, be recovered in an action for money had and received: (*Walker* v. *Constable*, 3 Bos. & Pull. 306.) But the expenses of investigating the title cannot be recovered in any form of action, unless a valid contract within the Statute of Frauds can be first established: (*Gosbell* v. *Archer*, 4 N. & W. 485; Selw. N. P. 177.)

CHAP. XIII.

As to remedies for breach of contract.

Conditions precedent.

As a general rule, the plaintiff must show a performance on his part of all conditions precedent; and as it is the duty of the purchaser to prepare and tender the conveyance to the vendor for execution, he cannot maintain this action unless he has either done this, or can show that his doing so would have been merely nugatory; as for example, where a vendor has incapacitated himself from completing the contract by conveying the property to somebody else (*Knight* v. *Crockford*, 1 Esp. N. P. C. 190), or is unable to confer a good title to it: (*Roper* v. *Coombes*, 6 B. & C. 534.) But if a purchaser can prove either of these facts, it will then be unnecessary for him to show any tender of the conveyance, which, under such circumstances, it would have been both imprudent and improper for him to have made: (*Jarmain* v. *Eggleston*, 5 Car. & Pay. 172); *Hodges* v. *Lichfield* (*Lord*), 1 Bing. N. C. 492.) At the same time it will be incumbent on the plaintiff to prove the title actually bad; for the mere opinion of conveyancers to that effect will be insufficient: (*Camfield* v. *Gilbert*, 4 Esp. N. P. C. 140.) But a plaintiff cannot at the trial insist upon any objection to the title appearing in the abstract, which he neglected to take at the time of rescinding the contract, and which might have been removed by the vendor if taken before: (Per Lord Tenterden, C. J., in *Todd* v. *Hoggart*, 1 M. & M. 128.) Nor will it be sufficient for a plaintiff merely to allege that the defendant, who was to make a good title, had delivered an abstract which was "insufficient, defective, and objectionable; the plaintiff must give a particular of all objections to the abstract arising upon matters of fact:" (*Collett* v. *Thompson*, 3 Bos. & Pull. 246.) But he will not be obliged to give a particular of any of the objections in point of law arising upon the abstract: (*Ib.*) And if a particular is not given, this will not preclude the

plaintiff from proving any infraction of the conditions of sale which entitles him to annul the contract: (*Squire* v. *Tod*, 1 Camp. N. P. C. 292.)

A good title means a good equitable, as well as legal title.

A contract to make a good title, means a good title both at law and in equity, and, therefore the court will inquire collaterally whether the title be good in equity: (*Maberley* v. *Robins*, 5 Taunt. 625.) And where, upon a sale there is such a doubt upon the vendor's title as to render it probable that the purchaser's right may become a matter of investigation, the court will not consider whether the title is of a doubtful description, such as a court of equity would not compel an unwilling purchaser to take, but simply whether the defendant has, or has not, a legal title to convey: (*Boyman* v. *Gutch*, 7 Bing. 379.)

When personal representatives may maintain an action for breach of contract.

Whenever a breach of contract occurs on the vendor's part in the purchaser's lifetime, and such purchaser afterwards dies, his personal representatives, and not the heir, are the proper persons to maintain this action; for it arises on a personal contract, the breach of which causes a loss to the personal estate: (*Orme* v. *Broughton*, 10 Bing. 533 ; S. C. 4 Moore & Scott, 417.)

Damages.

The damages which a purchaser may recover against a vendor are the expenses of investigating the title, including the charges for searching for judgments, and for comparing the abstract with the documents therein referred to: (*Hodges* v. *Lichfield* (*Lord*), 1 Bing. N. C. 492; *Wilde* v. *Fort*, 4 Taunt. 341); and also interest on his purchase-money, if he can show it has been lying dead and unproductive. But in order to enable a plaintiff to recover special damages for the costs of investigating the title, &c. he must lay them as such (*Flureau* v. *Thornhill*, 2 W. Bla. 1078; *Richards* v. *Barton*, 1 Esp. N. P. C. 268), for he cannot recover them under a count either for money had and received (*Früh-*

CHAP. XIII.

As to remedies for breach of contract.

ling v. *Schroeder*, 2 Bing. 77), or, it seems, under a count for money paid to the defendant's use: (*Camfield* v. *Gilbert*, 1 Esp. N. P. C. 221.) But a purchaser cannot recover damages for expenses incurred previously to entering into the contract; nor for surveying an estate before he knows the title; nor the costs for a conveyance drawn by anticipation; nor the extra costs of a suit for specific performance brought by the vendor: (*Hodges* v. *Lichfield* (*Lord*), 1 Bing. N. C. 492; Rosc. Ev. by Smirke, 195.) Neither can he recover any compensation for the fancied goodness of his bargain, where the vendor, without any fraud on his part, is unable to make a marketable title to the property: (*Ib.*; and see *Flureau* v. *Thornhill*, 2 W. Bla. 1078; *Walker* v. *Moore*, 10 B. & C. 416.) But a purchaser, by recovering the deposit from the auctioneer, will not thereby be precluded from proceeding in his special action against the vendor for the recovery of the interest on such deposit, as also for the expenses incurred in investigating the title.

Money had and received.

This form of action is usually adopted for the purpose of recovering the deposit, or any part of the purchase-money that has been paid to the vendor, who afterwards fails to perform his part of the contract. To maintain this action it will be necessary,—1. That the plaintiff should prove the contract; 2. The payment of the money; and 3. The breach on the part of the defendant.

Plaintiff may recover in an action for money had and received, although he should fail in proving a written agreement.

A plaintiff may recover in this form of action although he should fail in proving a written agreement; for notwithstanding an agreement will be void for passing the property when only by parol, a purchaser under it will still be entitled to proceed for money had and received to recover back his deposit, or any purchase-money paid by him: (*Walker* v. *Constable*, 1 Bos. & Pull. 306.)

In this form of action, as in the preceding one, the plaintiff need not tender a conveyance to the vendor, where the latter is unable to make a good title, or has debarred him altogether from the power of executing it by previously conveying the property to some other person. And where the vendor is unable to make a good title by the day appointed, it will, it seems, be no ground of defence, that the purchaser was not at that time prepared to pay the purchase-money (*Clarke* v. *King*, 1 Ry. & Mood. 394); for the plaintiff must be prepared to make out a good title on the day when the purchase is to be completed; and if he fails to do so, the purchaser will thereupon be entitled to vacate the agreement, and bring his action for the recovery of his deposit-money: (*Cornish* v. *Rowley*, 1 Selw. N. P. 178.) Still, in order to maintain this action, he must disaffirm the contract *ab initio;* for if he takes possession under it, he will be considered as having adopted it, and cannot then afterwards disaffirm it by quitting the premises: (*Hunt* v. *Silk*, 5 East, 499; see also *Cooke* v. *Munstone*, 1 Bos. & Pull. N. R. 351; *Beed* v. *Blandford*, 2 You. & Jerv. 278; and see 1 Selw. N. P. 102.)

Auctioneer

An action may be brought against an auctioneer for the recovery of the deposit where a good title cannot be made, and he does not appear to have paid over the money to his principal: (*Burrough* v. *Skinner*, 5 Bur. 2659.) And where an auctioneer does not disclose the name of his principal, an action will even lie against him for breach of contract: (*Hanson* v. *Roberdeau*, Peake, N. P. C. 120; *Simon* v. *Motivos*, 5 Bur. 1921; *Owen* v. *Gooch*, 2 Esp. N. P. C. 567.) So, where an attorney, who was also an auctioneer, received a deposit on property which he had sold by auction, and after queries raised on the title, and before they were cleared, paid over the deposit to his principal, it was held

CHAP. XIII.

As to remedies for breach of contract.

that the purchaser might recover this deposit from the auctioneer; because the latter, as attorney, had notice that the title had not been completed before he paid over the money, and consequently, that he had paid the money over in his own wrong: (*Edwards* v. *Hodding*, 5 Taunt. 815; see further on the duties and liabilities of auctioneers, *ante*, vol. i. p. 51, *et seq.*) But the amount only of the deposit can be recovered from the auctioneer, for he will not be liable to pay interest upon it: (*Walker* v. *Constable*, 1 Bos. & Pull. 306.)

SECTION III.

REMEDIES IN EQUITY.

At law damages only can be recovered for breach of contract, but in equity a specific performance may be decreed.

By the rules of the common law, every contract or covenant to sell or transfer a thing, if there is no actual transfer, is treated as a mere personal contract or covenant; and, as such, if it is unperformed by the party, no redress can be had, except in damages,—being, in effect, giving the party the election either to pay damages, or perform the contract: (Stor. Eq. 22.) But courts of equity have deemed such a course wholly inadequate for the purposes of justice; and considering it a violation of moral and equitable duties, they have not hesitated to interpose, and require from the conscience of the offending party a strict performance of what he cannot, without manifest wrong or fraud, refuse: (*Alley* v. *Deschampes*, 13 Ves. 228, 229; *Hamatt* v. *Yielding*, 2 Sch. & Lef. 553; Tr. Eq. lib. 1, c. 1, s. 5.) This jurisdiction appears to be of very ancient date (1 Mad. Pract. 361), it being referred to in the Year-book, 8 Edw. 4, lib. 4, as then well known and established: (Newl. Contr. c. 6, p. 88.) But whatever may be its origin and antiquity, it is now clearly established, that wherever a contract has been entered into by a competent party, and the nature and the circumstances are unobjectionable, it is as much a matter of course for a court of equity to decree specific performance, as it is to give damages at law: (*White* v. *Damon*, 7 Ves. 30; *Hall* v.

CHAP. XIII. — *Remedies in equity.*

Old practice of courts of equity, with respect to decreeing a specific performance.

Warren, 9 Ves. 605, 608; *Greenaway* v. *Adams*, 12 Ves. 395.)

The right to recover damages at law seems at one time, indeed, to have been the guide for equitable interference, and therefore it has been said the practice was to send a party to law, and if he recovered anything there by way of damages, the court then entertained the suit; but if nothing was recovered, the bill was dismissed: (*Dodsley* v. *Kinnersley*, Ambl. 406; 1 Mad. Pract. 288.) According to Mr. Butler, however, the old practice in courts of equity was, in all cases, first to send the party to law, to ascertain whether there was any remedy there or not. If there was no remedy at law, then equity would interfere. His words are:—"The grand reason for the interference of a court of equity is, that the imperfection of the legal remedy, in consequence of the universality of legislative provisions, may be redressed. Hence, for a length of time after the introduction of equitable judicature into this country, it was thought necessary, that, before equity should interfere, this imperfection should be manifested by the party's previously proceeding at law, so far as to show from its result the want of adequacy of legal redress, and his claim for equitable relief. This inflicted upon him two judicial suits, and consequently a double expense. To remedy this grievance it became the practice, particularly from the time in which the seals were intrusted to Lord Cowper, to dispense with the previous legal suit, when the want or inadequacy of the legal remedy was evident:" (Butl. Remin. 39, 40.) An eminent modern writer on equity remarks (see Stor. Eq. 41), that there is great reason to doubt if the rule ever was generally applied at any former period; for that many cases must always have existed in which damages were not recoverable at law, but in which a

specific performance would, nevertheless, be decreed: (1 Mad. Pract. 288; Fonbl. Eq. lib. 1, ch. 1, s. 5, note *e*; *ib.* lib. 1, ch. 3, s. 1, note *c*.) The rule, he continues to observe, was probably confined to cases in which the party was not entitled to any remedy at law, and there was no equity to be administered beyond the law. Lord Macclesfield denied the existence of the rule altogether, saying, "Neither is it a true rule which had been laid down by the other side, that where an action cannot be brought at law on an agreement for damages, there a suit will not lie in equity for a specific performance:" (*Cannel* v. *Buckle*, 2 P. Wms. 244.) And, accordingly, in the very case then before him he gave relief, although there was no remedy at law. "In truth, therefore," as this learned writer afterwards proceeds to observe, "the exercise of this whole branch of equity jurisprudence, respecting the rescission and specific performance of contracts, is not a matter of right in either party, but is a matter of discretion in the court; not, indeed, of arbitrary or capricious discretion, dependent upon the mere pleasure of the judge, but upon that sound and reasonable discretion which governs itself, as far as it may, by general rules and principles, but at the same time withholds or grants relief according to the particular circumstances of each particular case, when these rules and principles will not furnish any exact measure of justice between the parties: (Stor. Eq. 44, who refers to 3 Woodes' Lect. 58, p. 466; *White* v. *Damon*, 7 Ves. 35; *Buckle* v. *Mitchell*, 18 *ib.* 111; *Mason* v. *Armitage*, 13 *ib.* 37; *Clowes* v. *Higginson*, 1 Ves. & B. 527; *Moore* v. *Blake*, 1 Ball & B. 69; *Howell* v. *George*, 1 Mad. Rep. 9; see also 1 Mad. Pract. 287; 1 Fonbl. Eq. lib. 1, ch. 3, s. 9, n. 1; *St. John* v. *Benedict*, 6 John. Ch. Rep. 111; *Seymour* v. *Delancey*, *ib.* 222.)

Modern mode of proceeding upon a bill for specific performance where the bill is filed by the vendor.

In proceeding in a court of equity for a specific performance, a bill and suit are prosecuted in the usual way. The bill, when filed on behalf of the vendor, should state how the vendor is seised of the property, whether as owner, trustee, &c. It should then set forth the agreement to purchase (which, if alleged to be in writing, signature will be presumed until the contrary be shown) (*Rist* v. *Hobson*, 1 Sim. & Stu. 543); the performance of all conditions precedent mentioned in the contract or conditions of sale to be performed on the part of the vendor, as the delivery of the abstract, or the like; the willingness of the vendor to perform his part of the agreement, and the refusal on the part of the purchaser, with the charge of confederacy, unless the defendant is a peer, who is never to be charged with others in combining with the plaintiff to deprive him of his right: (see Rede's Tr. Eq. 40; 1 Eq. Draftsm. n. 2, Hughes's edit.) It then sets out the pretences on the part of the defendant, concluding with the interrogating part, the prayer for specific performance, for the payment of the purchase-money, with interest, and for *subpœna*, &c.: (see the form, 1 Eq. Draftsm. by Hughes, No. II., notes 1 & 2.)

Injunction when granted upon a bill filed for specific performance.

Sometimes a vendor files a bill for an injunction, as well as for a specific performance. Thus, where a purchaser is in possession of the estate, and there is any reason to apprehend that he may cut down timber, or commit any waste upon the property, the vendor may obtain an injunction to restrain him from so doing. But before granting this, the court will put the vendor upon proper terms, and, in most instances, order him to pay the deposit into court. But this he will not be compelled to do, where he on his part is both able and willing to make a good title and conveyance to the estate, which the purchaser improperly refuses to accept. To make an order

of this kind would be to enable a purchaser to avail himself of his own wrong; for by his default it is that the vendor retains the deposit without conveying the property: (*Wynne* v. *Griffith*, 1 Sim. & Stu. 147.)

Where the bill for specific performance is filed by purchaser.

Where a bill for a specific performance is filed by a purchaser, after the usual commencement, stating the relation of the parties, and the terms of the contract, it usually proceeds to set out the payment of the deposit; the request made to the defendant to convey, and his refusal; the charge of confederacy, and pretences on the part of the vendor; concluding with the interrogatories and prayer for specific performance, *subpœna*, &c.

Requisites to support a specific performance

In order to support a specific performance of an agreement to purchase real property, it will be necessary, in the first place, that such agreement itself should be a valid one, and ought to be in writing, signed by the party to be bound by it, or his lawfully authorized agent; it ought also to be certain, just and fair in all its parts, and capable of being performed.

Agreement must be a valid one.

Notwithstanding the agreement must be a valid one, the instrument is not arbitrarily restricted to one form only; and therefore, where a contract appears only in the condition of a bond secured by a penalty, the court will act upon it as an agreement, and will not suffer the party to escape from a specific performance, by offering to pay the penalty: (*Logan* v. *Wienholt*, 7 Bligh. 1; 2 Stor. Eq. 49, referring to *Ensign* v. *Kellogg*, 1 Pick. 1.) And notwithstanding equity will not, generally speaking, enforce the specific performance of an unwritten contract, still there are circumstances, as we have already seen (*ante*, vol. i. p. 80, *et seq.*), in which equity has departed from the strictness of this rule; as in the instances above mentioned, of a sale before a Master in Chancery; or where the agreement is confessed; or where there has been a part

CHAP. XIII.

Remedies in equity.

performance of it,—subjects which have been so fully treated upon in a former part of the work, as to render a repetition here wholly unnecessary: (see *ante*, p. 81, *et seq.*)

Must be certain, just, and fair in all its parts.

A specific performance will never be decreed in cases of fraud, or mistake, or of hard and unconscionable bargains; and equity will allow a defendant to resist a bill for specific performance, by showing that, under the circumstances, the plaintiff is not entitled to the prayer of his bill: (2 Stor. Eq. 70.) As, for example, that by fraud, accident, or even by mistake, the thing bought is different from what he intended (*Malins* v. *Freeman*, 2 Kee. 25, 34), or by showing that some material terms have been omitted in the agreement (*Joynes* v. *Statham*, 3 Atk. 288; *Woollam* v. *Hearn*, 7 Ves. 211; and see 1 Ves. & Bea. 532; *Mason* v. *Armitage*, 13 *ib.* 25; *Costigan* v. *Hastler*, 2 Sch. & Lef. 166; *Howell* v. *George*, 1 Mad. Rep. 11; *Flodd* v. *Finlay*, 2 Ball & Bea. 33; and see 1 Mad. Pract. 405); or that it is unconscientious (*Vaughan* v. *Thomas*, 1 Bro. C. C. 556), or unreasonable (see 1 Mad. Pract. 405, and cases there referred to), or fraud or surprise (*ib.*; and see *Clowes* v. *Higginson*, 1 Ves. & Bea. 526; *Townshend* (*Marquis of*) v. *Stangroom*, 6 Ves. 328; *Twining* v. *Morrice*, 2 Bro. C. C. 326); or there has been concealment (*Shirley* v. *Stratton*, 1 Bro. C. C. 440; *Oldfield* v. *Round*, 5 Ves. 508), misdescription or misrepresentation of the property, whether wilful or not, and whether latent, or patent: (*Cadman* v. *Horner*, 18 Ves. 11; *Wall* v. *Stubbs*, 1 Mad. 81), or any unfairness attending the transaction,—as, for example, drawing a party into it whilst in a state of intoxication: (*Savage* v. *Taylor*, 234; *Cragg* v. *Holme*, mentioned in a note to *Cook* v. *Clayworth*, 18 Ves. 14; and see *Child* v. *Dambridge*, 2 Vern. 71; *Scott* v. *Murray*, 1 Ves. 1.) And in every case

in which any of these defences are set up, parol evidence will be admitted in support of them (as to which see *ante*, vol. i. p. 88, *et seq.*), and to show that, under such circumstances, the plaintiff has no right to call for equitable assistance to enforce a specific performance of an inequitable contract: (*Davis* v. *Symonds*, 1 Cox, 402.)

The agreement must be capable of being performed.

Incapacity of the vendor to perform the contract will be a sufficient defence to a bill for specific performance of it; consequently, if he has a bad, or even a doubtful title (*Marlow* v. *Smith*, 2 P. Wms. 198; *Mitchell* v. *Neale*, 2 Ves. sen. 679; *Shapland* v. *Smith*, 1 Bro. C. C. 74; *Cooper* v. *Deane*, 4 *ib.* 80; *Crew* v. *Dicken*, 4 Ves. 97; *Rose* v. *Calland*, *ib.* 186; *Roake* v. *Kidd*, *ib.* 647; *Stapleton* v. *Scott*, 16 *ib.* 272; *Wheate* v. *Hall*, 17 *ib.* 80; *Sloper* v. *Fish*, 2 Ves. & Bea. 145; *Price* v. *Strange*, 6 Mad. 159; *Jervoise* v. *Northumberland* (*Duke of*), 1 Jac. & Walk. 559), or there are any incumbrances the vendor is unable to discharge the property from, the purchaser will never be compelled to complete his purchase. Still, a purchaser will not be entitled to cry off from his bargain on the ground of a bare possibility; consequently, suggestions of old entails, or doubts what issue persons have left, are never allowed to be of sufficient force to found a defence to a specific performance (*Dyke* v. *Sylvester*, 12 Ves. 126; *Briscoe* v. *Perkins*, 1 Ves. & Bea. 493); for, in cases of this nature, the court is governed by a reasonable, probable, and moral certainty; it being next to, if not altogether, impossible, in the ordinary nature of things, there should be an actual mathematical certainty of a good title: (*Hillary* v. *Waller*, 12 Ves. 239, 252; *Kingsley* v. *Young*, 7 *ib.* 473.) When, therefore, the only question in dispute is on the title, it is not usual to bring on the case at once for hearing; but the court will, on motion, order a reference to the Master, in which every thing relating to the title may be gone into, and

witnesses examined in the same manner as if the reference had been made under a regular decree: (*Woodroffe* v. *Titterton*, 8 Sim. 238.) And, notwithstanding the defendant by his answer put in issue an objection to the title, and both parties examine witnesses to the point before the hearing, yet, upon a reference to the Master, both parties may produce further evidence before him: (*Vancouver* v. *Bliss*, 11 Ves. 458; and see *Jenkins* v. *Hiles*, 6 *ib.* 646.)

What may be combined with the reference of title.

It was formerly considered an irregular practice to combine with a reference of title, an inquiry at what time a title could be made; such inquiry being the subject of further directions on the report. And the Master's report on the title was required to be obtained before such inquiry could be ordered, equally whether the reference of title was directed under a decree, or by a motion. But, although the reference could not embrace an inquiry at what time a title could be made, it seems it might extend to a direction whether it appeared by the abstract that a good title could be made. And after an answer submitting to perform the contract if a good title could be made, a reference was directed upon motion whether a good title could be made, and whether it appeared upon the abstract. But, in an anonymous case, the then Vice-Chancellor ordered the inquiry whether a title was shown prior to the filing of the bill to be incorporated in the order of reference, to save expense, and such has since continued to be the practice: (Smith's Pract. 494.)

Application for reference of title, how made.

The application for a reference for title is by notice of motion, which is served on the adverse clerk in court. The order being drawn up and duly passed and entered, a copy of the mandatory part, the abstract of title, or a copy thereof, are left with the Master, together with the written objections to the title. These objections are argued before the Master, either by the solicitors,

or the counsel of the parties. The Master then makes his report, which, if any of the parties are dissatisfied with, they can bring in exceptions, and take objections in the usual way. If the purchaser does not leave the abstract with the Master, the vendor takes out a warrant for him to leave the same ; and if the purchaser makes default, then, and not till then, the vendor is entitled to make a copy of the abstract from his draught, and leave it at the Master's office, the expense of which will be allowed him in the costs of the cause. If the purchaser leaves the abstract, the purchaser takes a copy from the Master's office, and not the vendor : (1 Smith Pract. 495.)

Reference to the Master.

The Master, upon a reference of title, is not confined to such evidence only as appears on the face of the abstract, but he may receive further evidence ; still, if upon such evidence he reports in favour of the title, the purchaser will be entitled to the costs of the reference : (*Fielder* v. *Higgonson*, referred to 1 Smith Pract. 487.) It will not be necessary that the vendor should have a good and perfect title himself; it will be sufficient if he has the means of procuring the concurrence of the necessary parties to the conveyance, or to perform such acts as will render such title good ; therefore, it cannot be objected that the legal estate is outstanding in an infant, or a lunatic, because both those parties are now rendered capable of conveying by special enactments created for that express purpose. And, as the recent act of 8 & 9 Vict. c. 112, renders the assignment of a satisfied term unnecessary, the fact of such term being outstanding will form no ground for exceptions to the Master's report, although it should appear uncertain in whom such term is vested : (*Hemmings* v. *Spiers*, V.-C. Court, 9 L. T. 194.)

Course of proceeding where the Master reports

If the Master reports against the title, the court will dismiss the bill, unless the purchaser should offer to take such a title as the vendor

CHAP. XIII. *Remedies in equity.*

really has it in his power to confer; but the court will never oblige a purchaser to take an imperfect title, whatever indemnity or compensation the vendor may offer him.

against the title.

When the Master has reported in favour of the title, a motion is made on notice that the purchaser may pay in his purchase-money within a certain time limited by the notice, and the defendant is served with a writ of execution of this order, and on failing to pay in his purchase-money an attachment is issued against him, and he is proceeded against in the same manner as any other defendant who neglects to perform a decree: (1 Smith Pract. 497.)

Course of proceedings where the Master reports in favour of the title.

Exceptions.

The court, in allowing exceptions where the report is in favour of the title, will give the vendor a reasonable time to remove the objection, and this, notwithstanding the exceptions and further directions were set down to come on together: (*Portman* v. *Mill*, 1 Russ. & Myl. 696.) If, upon a question of title, the Master is satisfied with the evidence before him, but upon hearing of an exception to the report, the court considers the evidence insufficient, the court will, upon the application of the vendor, refer it back to the Master to renew his report, in order to give the vendor an opportunity of producing further evidence: (*Andrew* v. *Andrew*, 3 Sim. 390; 1 Smith Pract. 496.) If exceptions taken to the report of a good title are overruled, other objections to the title cannot be made; but if exceptions are allowed, and a new abstract of the title is delivered, further objections may be brought in; (*Brook* v. ———, 4 Mad. 212.) If the Master reports a good title, and the reference has been made under a decree, the cause is set down on further directions, and the order is a declaration that the plaintiff is entitled to a specific performance of the agreement; and a reference back to the Master is directed to take an account of what is due for principal and interest on the pur-

chase-money, which the defendant is ordered to pay on the plaintiff executing a proper conveyance of the property; and in case the parties differ about the matter, the conveyance is to be settled by the Master: (1 Smith Pract. 497.)

Course of proceeding when the bill is dismissed.

When the bill is dismissed on account of the vendor being unable to confer a title, it will generally be without prejudice to any legal remedy the purchaser may have upon the contract (*Crop* v. *Norton*, 2 Atk. 74; *Bennett College* v. *Carey*, 3 Bro. C. C. 390); and the like rule also, generally speaking, prevails where the vendor is plaintiff: still, under certain circumstances, as where the vendor has evidently no title to the property he professed to sell, equity will restrain him from bringing an action at law upon the agreement: (*Macnamara* v. *Arthur*, 2 Ball & B. 249.)

Costs in equity are always discretionary with the court.

Costs in equity are always discretionary with the court, although, generally speaking, they will fall upon the losing party, unless there are equitable circumstances arising out of the case which induce the court to determine otherwise. As a general rule, where a vendor brings a bill for a specific performance, which is dismissed because he is unable to make a good title, he will be decreed to pay the costs of the suit (*Vancouver* v. *Bliss*, 11 Ves. 458); and this even where the defect has arisen by accident; as where the title-deeds were burnt after the contract was entered into: (*Bryant* v. *Bush*, 4 Russ. 1.) But if a purchaser has set up any special matter of defence to a specific performance, as fraud or misrepresentation on the part of the vendor, and such facts are disproved, the purchaser will have to pay the costs of the defence, notwithstanding the bill be dismissed on account of the vendor's inability to make a title: (*Wright* v. *Howard*, 1 Sim. & Stu. 190.) But a purchaser will not necessarily render himself liable to costs by taking a fair and

CHAP. XIII.

Remedies in equity.

reasonable objection, although such objection may be overruled, and costs are always allowed where the facts contested are presumed to be in the knowledge of the party that contests them (*Trinity House* v. *Ryal*, Vin. Abr. tit. "Costs," Q. Ca. 22; *Cox* v. *Chamberlain*, 4 Ves. 631; *Staines* v. *Morris*, 1 Ves. & Bea. 8; *Aislabie* v. *Rice*, 3 Mad. Rep. 260; *Sharp* v. *Roahde*, 2 Rose, 192; 2 Mad. Pract. 561), unless the objection has been previously decided in a former cause, and the purchaser had notice of it; for then, it seems, he would be decreed to pay the costs of the suit: (*Biscoe* v. *Wilks*, 3 Mer. 456.) Where a vendor is unable to make a good title when the bill is filed, the practice has been to make him pay the costs up to the report of a good title: (*Harford* v. *Purrier*, 1 Mad. Rep. 532; and see 2 Mad. Pract. 561.) And if the title, though established, is not clear upon the abstract, the court will decree a specific performance without costs: (*Collinge* v. ———, 3 Ves. & Bea. 143, n.; 2 Mad. Pract. 561.) And whenever a bill for a specific performance is dismissed on the ground of misrepresentation, it will be with costs: (*Buxton* v. *Lister*, 3 Atk. 387.) Nor will costs be given where a specific performance of an agreement at a great undervalue is enforced: (*Burroughs* v. *Lock*, 10 Ves. 476.)

Court sometimes refuses defendant costs, where it would tend to injure the title he is compelled to take.

On bills for a specific performance, the court has sometimes thought it imprudent to give the defendant costs, though there may have been reasonable and weighty objections to the title; because, to give costs is to injure the title he is compelled to take, and in such case the court has decreed a specific performance without costs: (2 Mad. Pract. 560, referring to *Mc Queen* v. *Farquhar*, 11 Ves. 482.) Either party filing a bill for a specific performance contrary to the terms of the contract, will have to pay the costs: (*Williams* v. *Edward*, 2 Sim. 78,)

CHAPTER XIV.

NEW ORDERS FOR REGULATING THE PRACTICE OF THE COURT OF CHANCERY.

Since the printing of the foregoing pages, and during some delay that was incurred in consequence of waiting for the passing of the new act, in order to embody the same in the present work, some important alterations were made in the practice of the Court of Chancery, under certain new rules framed under the powers and provisions of the statutes 4 & 5 Vict. c. 52 ; 5 Vict. c. 5 ; 8 & 9 Vict. c. 105.

Order I. Any person seeking equitable relief, may, without special leave of the court, and instead of proceeding by bill of complaint in the usual form, file a claim in the Record and Writ Clerk's Office, in any of the following cases, that is to say, where the plaintiff is or claims to be

1. A creditor upon the estate of any deceased person, seeking payment of his debt out of the deceased's personal assets.
2. A legatee, under the will of any deceased person seeking payment or delivery of his legacy out of the deceased's personal assets.
3. A residuary legatee, or one of the residuary legatees, of any deceased person, seeking an account of the residue and payment or appropriation of his share therein.
4. The person or any of the persons entitled to the personal estate of any person who may have died intestate, and seeking account of

such personal estate, and payment of his share thereof.

5. An executor or administrator of any deceased person, seeking to have the personal estate of such deceased person administered under the directions of the court.

6. A legal or equitable mortgagee or person entitled to a lien as security for a debt, seeking foreclosure or sale, or otherwise to enforce his security.

7. A person entitled to redeem any legal or equitable mortgage or any lien, seeking to redeem the same.

8. A person entitled to the specific performance of an agreement for the sale or purchase of any property, seeking such specific performance.

9. A person entitled to an account of the dealings and transactions of a partnership dissolved or expired, seeking such account.

10. A person entitled to an equitable estate or interest, and seeking to use the name of his master in prosecuting an action for his own sole benefit.

11. A person entitled to have a new trustee appointed in a case where there is no power in the instrument creating the trusts to appoint new trustees, or where the power cannot be exercised, and seeking to appoint a new trustee.

II. Such claim in the several cases enumerated in Order I. is to be in the form and to the effect set forth in Schedule A. hereunder written, as applicable to the particular case, and the filing of such claim is, in all cases not otherwise provided for, to have the force and effect of filing a bill.

III. Every such claim is to be marked at or near the top or upper part thereof, in the same manner as a bill is now marked with the name of the Lord Chancellor, and one of the Vice-

Chancellors, or with the name of the Master of the Rolls.

New orders for regulating chancery practice.

IV. Upon filing such claim, the plaintiff thereby claiming may sue out a writ of summons against the defendant to the claim, requiring him to cause an appearance to be entered to such writ, and also requiring him, on a day or time to be therein named, or on the seal or motion day then next following, to show cause, if he can, why such relief as is claimed by the plaintiff should not be had, or why such as shall be just with reference to the claim should not be made.

V. Such writ of summons is to be in the form and to the effect in that behalf set forth in No. I. of Schedule B. hereunder written, with such variations as circumstances may require, and is to be sealed with the seal of the office of the Clerks of Records and Writs.

VI. In any case other than those enumerated in Order I., or in any case to which the forms set forth in Schedule A. are not applicable, the court (if it shall so think fit) may, upon the *ex parte* application of any person seeking equitable relief, and upon reading the claim proposed to be filed, give leave to file such claim, and sue out a writ of summons thereon under these orders; and if such leave be given, an indorsement thereon by the Registrar upon the proposed claim shall be a sufficient authority for the Record and Writ Clerk to receive and file such claim.

VII. In the case provided for by the 5th Article of Order I., any person who, under the 3rd or 4th Article of Order I., might have claimed relief against the executor or administrator of the deceased person whose personal estate is sought to be administered, and the co-executor, or co-administrator (if any) of the plaintiff, may be named in the writ of summons as defendants to the suit; and in the

CHAP. XIV.

New orders for regulating chancery practice.

first instance no other person need be therein named.

VIII. In other cases, the only person who need be named in the writ of summons, as defendant to the suit in the first instance, is the person against whom the relief is directly claimed.

IX. All claims, and all writs, *caveats*, proceedings, directions, and orders consequent thereon, either before the court, or in the Masters' offices, are to be deemed proceedings, writs, and orders subject to the general rules, orders, and practice of the court, so far as the same are or may be applicable to each particular case, and consistent with these orders; and all orders of the court made in such proceedings are to be enforced in the same manner, and by the same process, as orders of the court made in a cause upon bill filed.

X. Writs of summons are, as to the number of defendants to be named therein, as to the mode of service thereof, and as to the time and mode of entering appearances thereto, to be subject to the same rules as writs of subpœna to appear to and answer bills.

XI. The time for showing cause named in any writ of summons (except a writ of summons to revive or carry on the proceedings) is to be fourteen days at the least after the service of the writ, but by consent of the parties, and with the leave of the court, cause may be shown on any earlier day.

XII. At the time for showing cause named in the writ, or on the seal or motion day then next following, or so soon after as the case can be heard, the defendant, having previously appeared, is personally or by counsel to show cause in court, if he can (and if necessary, by affidavit), why such relief as is claimed by the claim should not be had against him.

XIII. At the time appointed for showing cause upon the motion of the plaintiff, and on

New orders for regulating chancery practice.

hearing the claim, and what may be alleged on the part of the defendant, or upon reading a certificate of the appearance being entered by the defendant, or an affidavit of the writ of summons being duly served, the court may, if it shall think fit, make an order granting or refusing the relief claimed, or directing any accounts or inquiries to be taken or made, or other proceedings to be had for the purpose of ascertaining the plaintiff's title to the relief claimed; and further, the court may direct such (if any) persons or classes of persons as it shall think necessary or fit to be summoned or ordered to appear as parties to the claim, or on any proceedings before the Master, with reference to any accounts or inquiries directed to be taken or made, or otherwise.

XIV. Every order to be made is to have the effect of, and may be enforced as, a decree or decretal order made in a suit commenced by bill, and duly prosecuted to a hearing according to the present course of the court.

XV. If, upon the application for any such order, or during any proceedings under any such order when made, it shall appear to the court that for the purposes of justice between the parties it is necessary or expedient that a bill should be filed, the court may direct or authorize such bill to be filed, subject to such terms as to costs or otherwise as may be thought proper.

XVI. The orders made for granting relief in the several cases to which the forms set forth in Schedule A. are applicable, may, if the court thinks fit, be in the form and to the effect set forth in Schedule C. as applicable to the particular case, with such variations as circumstances may require.

XVII. Under every form of reference to the Master under these orders, the Master is, unless the court otherwise orders, to be at liberty to

CHAP. XIV.

New orders for regulating chancery practice.

cause the parties to be examined on interrogatories, and to produce deeds, books, papers, and writings, as he shall think fit, and cause advertisements for creditors, and if he shall think it necessary, but not otherwise, for heirs, and next-of-kin or other unascertained persons, and the representatives of such as may be dead, to be published in the usual forms, or otherwise, as the circumstances of the case may require; and in such advertisements to appoint a time within which such persons are to come in and prove their claims, and within which time, unless they so come in, they are to be excluded the benefit of the order; and in taking any account of a deceased's personal estate under any such order of reference, the Master is to inquire and state to the court what part (if any) of the deceased's personal estate is outstanding or undisposed of, and is also to compute interest on the deceased's debts, as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of four per cent. per annum from the date of the order, and to compute interest on legacies after the rate of four per cent. per annum, from the end of one year after the deceased's death, unless any other time of payment or rate of interest is directed by the will, but in that case according to the will; and under every order whereby any property is ordered to be sold without the approbation of the Master, the same is to be sold to the best purchaser that can be got for the same, to be allowed by the Master, wherein all proper parties are to join as the Master shall direct.

XVIII. If, upon the proceedings before the Master under any such order, it shall appear to the Master that some persons, not already parties, ought to attend, or to be enabled to attend the proceedings before him, he is to be at liberty to certify the same; and upon the production of such certifi-

New orders for regulating chancery practice.

cate to the Record and Writ Clerk, the plaintiff may sue out a writ of summons, requiring the parties named in such certificate to appear to the writ, and such persons are thereupon to be named and treated as defendants of the suit.

XIX. Such writ of summons under an order or Master's certificate is to be in the form and in the effect to that behalf set forth in No. 2. of Schedule B., with such variations as circumstances may require.

XX. The persons so summoned having appeared, are to be at liberty to attend, and to be entitled to notice of the proceedings before the Master under the order of *referendi*, subject to such directions as the Master may make in respect thereof.

XXI. Where any proceedings originally commenced by claim and writ of summons shall, by the death of parties, or otherwise, have become abated, or defective for want of parties, and no new relief is sought, a claim to revive or carry on the suit may be filed; and such claim is to be in the form set forth in No. 12 of Schedule A.

XXII. The party claiming simply to revive or carry on proceedings, may sue out a writ of summons requiring the defendant thereto to appear to the writ, and show cause if he can why the proceeding should not be revived or carried on.

XXIII. Such writ of summons is to be in the form and to the effect in that behalf set forth in No. 3 of Schedule B., with such variations as circumstances may require.

XXIV. If any defendant to any such writ is desirous of showing cause why the proceedings should not be revived or carried on, he is to appear, and to file a *caveat* against such revivor or carrying on in the Record and Writ Clerk's Office, in the form set forth in No. 4 of Schedule B., and to give notice thereof in writing to the

New orders for regulating chancery practice.

opposite party. If no such *caveat* be filed within eight days from the time limited for his appearance to the writ, then at the expiration of such eight days the proceedings are to be revived, and may be carried on without any order for the purpose; and a certificate of the Record and Writ Clerk, that no *caveat* has been filed within the time limited to be a sufficient authority for the Master to proceed. But if any such *caveat* be filed, the proceedings are not to be revived or carried on without an order to be obtained on motion, of which due notice is to be given.

XXV. Where any further or supplemental relief is sought, and such supplemental relief is such as is provided for in any of the cases enumerated under Order I., a supplemental claim may be filed in such of the forms set forth in Schedule A. as is applicable to the case.

XXVI. If such supplemental relief is not such as is provided for by Order XXV., a supplemental claim may be filed, stating shortly the nature of the plaintiff's case, and the supplemental relief claimed, but the leave of the court is to be obtained previously to the filing thereof, upon an *ex parte* application for the purpose, in the manner specified in Order VI.

XXVII. A writ of summons may be sued out and other proceedings may be taken upon a supplemental claim in like manner as upon an original claim.

XXVIII. Guardians *ad litem* to defend, may be appointed for infants or persons of weak or unsound mind against whom any writ of summons may have issued under these orders, in like manner as guardians *ad litem*, to answer and defend are now appointed on suits on bill filed.

XXIX. Any order or proceeding made or purporting to be made in pursuance of these orders may be discharged, varied, or set aside on

New orders for regulating chancery practice.

motion; and any order for accelerating proceedings may be made by consent.

XXX. Any order of the Master of the Rolls or of any of the Vice-Chancellors may be discharged or varied by the Lord Chancellor on motion.

XXXI. If any of the cases enumerated in Order I. involve or are attended by such special circumstances affecting either the estate or the personal conduct of the defendant as to require special relief, the plaintiff is at liberty to seek his relief by bill, as if these orders had not been made.

XXXII. If at any time after these orders come into operation any suit for any of the purposes to which the forms set forth in Schedule A. are applicable shall be commenced by bill and prosecuted to a hearing in the usual course, and upon the hearing it shall appear to the court that an order to the effect of the decree then made, or an order equally beneficial to the plaintiff might have been obtained upon a proceeding by summons in the manner authorized by these orders, the court may order that the increased costs which have been occasioned by the proceeding by bill beyond the amount of costs which would have been sustained in the proceeding by summons, shall be borne and paid by the plaintiff.

XXXIII. The Record and Writ Clerks are directed to take the following fees:—

	£	*s.*	*d.*
1. For filing a claim	0	5	0
2. For sealing every writ of summons	0	5	0
3. For filing a *caveat*.....	0	2	6

For appearances, office copies, certificates, &c. the same fees as directed by the schedule of fees now in force.

CHAP. XIV.

New orders for regulating chancery practice.

The Registrars are directed to take the following fees :

	£	s.	d.
1. For every order on the hearing of a claim, and on further directions...	2	0	0
2. For every office copy thereof.....	0	10	0
3. For every order on arguing exceptions	1	0	0
4. For every office copy thereof.....	0	5	0
5. For every order for transfer out of court, or sale of any sum of government stocks, &c. exceeding 100*l.* stocks or annuities, and for every order for payment out of court of any annuity or annuities, or of any interest or dividends upon stocks or annuities exceeding in the whole 5*l.* per annum	1	10	0
6. For every office copy thereof	0	10	0

For every other order and office copy, the same fees as are now received by the registrars and their clerks under the schedules of fees now in force.

Solicitors are entitled to charge and be allowed the following fees:

For instructions to sue or defend	0	6	8
For instructions for every claim	0	13	4
For preparing and filing a claim	2	2	0
For preparing a writ of summons.....	0	13	4
For each writ after the first	0	6	8
For engrossing claims and writs, per folio.....	0	0	6
For parchment: as paid.....			
For each copy of writ to serve: per folio.....	0	0	4
For the brief to counsel to move for leave to file claim (exclusive of a copy of the claim for counsel and the court)	0	10	0

	£	s.	d.
For the brief and instructions to counsel, on the hearing (exclusive of any necessary copies)	1	0	0
For taking instructions to appear and for entering appearance—			
For one or more defendants if not exceeding three	0	13	4
If exceeding three and not more than six, an additional sum of	0	6	8
If exceeding six, for every number not exceeding three, an additional sum of	0	6	8
For settling minutes, passing and entering order on hearing : the same charges as on a decretal order			
For entering a *caveat*	0	6	8
For procuring certificate of no *caveat*	0	6	8
For term fee : as in suit.			

And also all such fees as by the present practice of the court they are entitled to, save such as are varied or rendered unnecessary by these present Orders.

XXXIV. These Orders will come into operation on the 22nd day of May, 1850.

XXXV. In these Orders and the Schedules the following words have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction, viz :—

1. Words importing the singular number include the plural number, and words importing the plural number include the singular number.
2. Words importing the masculine gender include females.

3. The word "affidavit" includes "affirmation" and "declaration on honour."
4. The word "person" or party" includes a body politic or corporate.
5. The word "legacy" includes "an annuity" and a specific as well as a pecuniary legacy.
6. The word "legatee" includes a person interested in a legacy.
7. The expression "residuary legatee" includes a person interested in the residue.

CHAPTER XV.

PRACTICAL OBSERVATIONS ON THE STAMP DUTIES ON CONVEYANCES.

I. Preliminary Remarks.
II. Agreements.
III. Conveyances and Deeds in General.
IV. Leases.
V. Mortgages, Bonds, Warrants of Attorney, &c.
VI. Settlements.
VII. Comparative Table of Old and New Stamp Duties on Conveyances, Leases, Bonds, Mortgages, Warrants of Attorney, and Settlements.

I. Preliminary Remarks.

There are few matters connected with conveyancing that have more completely puzzled the profession than the stamp duties. In acting for a purchaser, a solicitor has not only to ascertain that all the deeds and other documents upon which the title depends have the proper stamps attached to them, but he has also to determine what stamps he must employ upon the assurances necessary to perfect the sale. A difficulty which is greatly enhanced by the obscure and ambiguous wording of the acts; so that, on the one hand, he may saddle his client with additional expenses, by employing more stamps than are actually necessary, or he must incur the risk of

CHAP. XV.

Preliminary remarks.

incurring penalties, and of rendering the assurances inadmissible in evidence, on account of the proper amount of stamp duty not having been paid upon them. Thus it was, that, although a lease for a year stamp was not necessary upon the release of an estate in reversion, which even the occupation of a tenant under a lease would have been sufficient to satisfy, still that stamp was rarely dispensed with in conveyances of property of this kind, except where such reversion was expectant on a preceding estate of freehold. Even where the legal estate was outstanding in a trustee of an attendant term, the same caution was adopted, as it also was in the conveyance of a mere equity of redemption. Nor were these the only difficulties, for doubts were often arising as to whether schedules or inventories annexed to or referred to in deeds were to be considered as part of them, so as to be liable to progressive duties, or were to be charged with a separate duty adapted to those particular instruments. Nice questions also often arose as to whether the alteration of a mistake, or the filling up of blanks, or adding new parties, would have rendered a fresh stamp necessary, as also where the instrument, or any portion of it was altered or obliterated by any of the parties, or by a stranger.

Doubts raised as to *ad valorem* duties where the consideration for a lease was paid to other parties than the lessor.

So, where numerous leases had been from time to time granted upon or after sales made in consideration of money paid to some other person than the lessor, without stamping such leases with any *ad valorem* stamp in respect of such pecuniary consideration, doubts were often raised as to the legality of the stamp.

Mortgages.

With respect to mortgages also, particularly upon transfers or further charges, questions were continually raised as to the proper stamps to be employed, respecting which, a considerable difference has prevailed amongst the profession,

Preliminary remarks.

and the question has been involved in still greater perplexity by a contrariety of decisions that have been made upon the subject, which we purpose entering upon more fully hereafter.

Many doubts and difficulties removed by recent statute 13 & 14 Vict. c. 97.

Many of these doubts and difficulties have, however, now been happily removed by the recent statute 13 & 14 Vict. c. 97, but at the same time it will be necessary to take a view of the pre-existing law on the subject, as that must govern not only the stamps affixed to instruments prior to that period, but all powers, provisions, clauses, regulations, directions, and exemptions, fines, forfeitures, pains and penalties, contained in or imposed by the statute 55 Geo. 3, c. 184, and the schedule thereunto annexed, and in or by any other act or acts relating to duties of the same kind, which are expressly embodied in the present act.

Provisions and powers contained in former acts embodied in present act.

SECTION II.

AGREEMENTS.

Alterations effected in agreement stamps by recent enactments.

THE stamps adapted to agreements having already been treated upon in a former part of the work (*ante*, vol. 1, p. 108) will render any repetition in this place unnecessary, except so far as to show what changes have been effected by the recent enactments relating to these instruments.

Law respecting agreement stamps prior to statute 13 & 14 Vict. c. 97.

55 Geo. 3, c. 184.

Under the statute 55 Geo. 3, c. 184, agreements for the sale of landed property, where the price amounted to 20*l.* or upwards, and not exceeding fifteen folios, required a 1*l.* stamp; and where it contained more than the above number of folios, a 1*l.* 15*s.* stamp was required, with a progressive duty of 1*l.* 5*s.* for every further fifteen folios. But there was an express proviso in this statute, that where several letters were offered in evidence to prove an agreement, it should be sufficient if any one of these letters were stamped with a 1*l.* 15*s.* stamp. The statute

7 Vict. c. 21.

7 Vict. c. 21, however, reduced the duties upon agreements charged by the above-mentioned statute, 55 Geo. 3, to 2*s.* 6*d.* only. But, as the latter enactment only included such agreements as would previously have been covered with a 1*l.* stamp, it could not comprehend an agreement exceeding fifteen folios; neither did it extend to agreements supported through the medium of a correspondence carried on by divers letters.

But now, by statute 13 & 14 Vict. c. 97, (schedule "Agreement,") every agreement under

hand only not otherwise charged than under the head AGREEMENT, in the schedule to the act 55 Geo. 3, c. 184, nor expressly exempted from all stamp duty if under thirty folios, is charged the duty of 2*s.* 6*d.* with a progressive duty to the same amount for every succeeding fifteen folios.

SECTION III.

CONVEYANCES AND DEEDS IN GENERAL.

Ad valorem duties now placed on a regularly graduated scale.

THE *ad valorem* duties on conveyances are now put upon a fair and liberal footing, the duties on small purchases, and mortgages, and settlements considerably reduced, whilst, by establishing a regularly graduated scale according to the amount of the consideration-money expressed to be paid, secured, or settled, the duties on large properties are proportionably increased, and thus, at length, the burthen of taxation is fairly and properly distributed, instead of, as formerly, the heaviest weight being cast upon the smallest amount of property. The tax for a lease for a year has also been abolished. This harsh duty had been continued by several enactments (4 & 5 Vict. c. 21; 7 & 8 Vict. c. 76; 8 & 9 Vict. c. 106), notwithstanding the lease for a year itself was actually done away with; but the absurd injustice of thus keeping up so unmeaning a tax at length became so manifest, that the Legislature was induced to expunge it; as they also did the additional stamp duties imposed on a feoffment, and a bargain and sale enrolled: (stat. 13 & 14 Vict. c. 97, s. 6.)

As to stock and funded property.

Under the pre-existing enactments, no *ad valorem* duty was payable where the consideration for the purchase was a transfer of stock; consequently a common 35*s.* deed stamp would have covered any conveyance of this kind, with-

out any reference as to the value or amount of the stock. But under the recent statute, 13 & 14 Vict. c. 97, schedule "Conveyance," where the consideration consists of stock, the duties are to be calculated according to the average selling price of such stock on the day, or on either of the ten days preceding the date of the conveyance, or if no sale shall have taken place within ten days, then according to the selling price thereof on the day of the last preceding sale.

Mortgages, judgments, bonds, and debentures.

Where the consideration is a mortgage, judgment, or bond, or debenture, then the *ad valorem* duty is to be calculated according to the sum due thereon, both for principal and interest: (stat. 13 & 14 Vict. c. 97; schedule, "Conveyance.")

Annuity.

Where the consideration is an annuity, then a 35*s.* deed stamp will be sufficient to cover it: (*James* v. *James*, 3 Bro. & Bing. 702; *Blake* v. *Attersol*, 2 B. & C. 875; *Tetley* v. *Tetley*, 4 Bing. 214; *Cumberland* v. *Kelly*, 3 B. & A. 607.) It was, indeed, at one time contemplated to establish an *ad valorem* duty where the consideration was an annuity, according to the tables annexed to the act 36 Geo. 3, c. 52; and a clause to that effect was actually introduced into the bill upon which the statute 13 & 14 Vict. c. 97, was founded; but it was afterwards struck out, so that the law, in this respect, still remains unaltered.

Money due on mortgage to be taken as part of the consideration on purchases of an equity of redemption.

Where an equity of redemption is purchased, then the principal sum due upon the mortgage must be taken as part of the consideration-money, in addition to the sum paid for the sale of the equity of redemption. Thus, for example, if the mortgage debt be 1,000*l.*, and the price to be paid for the equity of redemption is 500*l.*, an *ad valorem* stamp adapted to a purchase for 1,500*l.* will be required.

CHAP. XV.

Conveyances and deeds in general.

Where purchase and mortgage are contained in the same deed.

So where, as sometimes happens, a purchase and mortgage are contained in the same deed, as where a vendor agrees to allow a portion of the purchase-money to remain on the security of the property sold, then both an *ad valorem* stamp on a purchase, and also upon a mortgage will be requisite, viz., an *ad valorem* stamp adapted to the amount of the mortgage and purchase-money added together, and then an *ad valorem* stamp suited to the amount secured by the mortgage. Thus, if the purchase was for 1,500*l.*, 1,000*l.* of which was to be allowed to remain upon mortgage, there must be an *ad valorem* stamp for 1,500*l.* on the purchase, and for 1,000*l.* on the mortgage.

These *ad valorem* duties on conveyances are applicable to all transfers from a vendor to a purchaser, whether by grant, disposition, lease, assignment, transfer, release, renunciation, or of any other kind or description whatsoever, upon the sale of any lands, tenements, rents, annuities, or other property real or personal, heritable or moveable, or of any right, title, interest, or claim in, to, out of, or upon any lands, tenements, rents, annuities, or other property: (see schedule attached to statute 13 & 14 Vict. c. 97.)

No *ad valorem* duty payable upon a nominal consideration.

But where no consideration is expressed, or only a mere nominal one, as, for example, 5*s.* or 10*s.*, then no *ad valorem* duty attaches, but the proper stamp will be a common 35*s.* deed stamp, with a progressive duty of 25*s.*

Full consideration must be expressed on the face of the deed.

By the statute 48 Geo. 3, c. 149, the provisions of which are incorporated into all subsequent enactments, it is declared that in all cases of sales, the full consideration-money which shall be directly or indirectly paid for the same, shall be truly expressed in words at length in the conveyance thereof, or in default thereof, the purchaser and seller shall forfeit 50*l.*, and be

charged with five times the amount of the duty beyond what was actually paid: (sects. 22, 23.)

In addition to these penalties, the attorney, conveyancer, or other person preparing such deed in which the consideration is not truly expressed, will incur a penalty of 500*l.*, and be disqualified to practise or hold any office. Similar penalties are also inflicted on stewards of manors for preparing copyhold assurances, and stewards and tenants of manors not actually preparing, but aiding and assisting in the passing of any copyhold assurance, wherein the true consideration is not fully set out, are liable to a fine of 40*l.* for every offence: (sects. 30, 34.)

Attorney, conveyancer, &c., liable to penalties for not truly expressing the consideration.

But notwithstanding the infliction of these severe penalties for thus untruly setting out the consideration for the conveyance, the deed of conveyance itself will not be thereby impeached. In fact, the statute, in imposing penalties, seems to have studiously guarded against this consequence; for what it says, is, that in case the consideration-money shall not be fully expressed the seller and purchaser shall forfeit 50*l.* The Legislature meant by imposing a heavy penalty on not setting forth the full consideration, to punish the individuals guilty of the fraud, but to have made the instrument void, would have worked great injustice on many innocent persons: (*Robinson* v. *Macdonnell*, 5 Mau. & Selw. 234; *Doe dem. Higginbottom* v. *Hobson*, 3 Dow. & Ry. 188; *Duck* v. *Braddyll*, 13 Pri. 496; *Doe dem. Kettle* v. *Lewis*, 10 B. & C. 673.)

The penalties are imposed to prevent an evasion of the duties that are chargeable upon the amount of consideration-money actually and *bonâ fide* paid for the purchase of the property, consequently, no penalties will attach on account of the property being ultimately sold for a lesser sum than the amount originally agreed upon at the time the contract was entered

No penalties will attach in consequence of the property being eventually sold for a lesser sum than originally agreed upon.

CHAP. XV.

Conveyances and deeds in general.

into, although it should be proved that such reduction in price was made for the express purpose of avoiding the higher rate of stamp duty: (*Shepherd* v. *Hall*, 3 Camp. N. P. C. 180.) For if parties were to be subjected to penalties, where the sum actually paid and so expressed in the purchase-deed was less than what was agreed upon at the time of entering into the contract, they would incur liabilities never dreamt of by the profession, nor, we presume, contemplated by the Legislature; for who, when an abatement in price has been decreed by a court of equity, or agreed upon between the parties on account of deficiency in quantity, or quality, or any other cause, would ever have deemed it necessary to affix an *ad valorem* upon the conveyance proportioned to the price originally agreed upon. Arrangements of this kind, therefore, are perfectly safe, and may oftentimes be advantageously resorted to.

Progressive duties.

With respect to the progressive duties, these were first introduced by statute 19 Geo. 3, c. 66, by which all attorneys, solicitors, or other persons are rendered liable to a penalty of 10*l.*, with treble costs of suit, to any person who should inform or sue for the same, for engrossing more than twelve chancery sheets of ninety words, or fifteen common law sheets of seventy-two words in each sheet; but the same statute also provides, that the above clause is not to extend to charges for any deed the whole of which shall not amount to the usual quantity contained in two skins: (sect. 13.) Under this proviso, therefore. an instrument, although exceeding fifteen folios, if it does not amount to thirty in the case of a conveyance, or exceed that number in the case of a mortgage, will not require any progressive duty.

How the folios are to be calculated

In calculating the folios, figures are counted as the same number of words they are employed

Conveyances and deeds in general.

to express. Every schedule, receipt, or other matter, whether indorsed on the deed, or annexed thereto, will also be counted in the folios; consequently every inventory or catalogue which is annexed to the deed will be counted as part of it, as will also the receipt clause indorsed, and the signatures of the parties and witnesses, and attestation clauses: (*Lindley* v. *Clarkson*, 1 C. & M. 439; S. C., 3 Tyrw. 352; *Veale* v. *Nicholls*, 1 M. & Ry. 248; *Lake* v. *Ashwell*, 3 East, 326.) But the date and names of the parties, and the title of the deed indorsed thereon, will not be so calculated; for such matter is not referred to in the deed, nor is it in any way connected with its authenticity, for if it were marked externally as a feoffment, or as a bargain and sale, that would not prevent it from being pleaded as a release or an assignment. Neither will an indorsement convert that into a mortgage which is an absolute and unconditional conveyance: (*Winter* v. *Fearon*, 4 B. & C. 663.)

As to a schedule, &c. referred to by, but not annexed to, the deed.

And where any schedule, inventory, catalogue or the like, is not actually annexed to the deed, or indorsed thereon, but were merely referred to in it, then such instruments, instead of being charged with the progressive duty, as part of the deed referring to them, were charged with a distinct duty, and with a progressive duty for the same amount, under the head "schedule, inventory or catalogue." But if such schedule, &c., although bearing the distinct stamp appropriated to it, was annexed to, or indorsed upon, any other instrument which referred to it, it would thereby have become incorporated into and form part of the latter instrument, and thus have been rendered chargeable with the progressive duty accordingly, and the circumstance of such schedule, &c., being substantively stamped, would have made no difference whatever in that respect: (*Veale* v. *Nicholls*, 1 Moo. & R. 248.) But now, the

CHAP. XV.

Conveyances and deeds in general.

statute 13 & 14 Vict. c. 97, after reciting that by several acts now in force relating to the stamp duties, as well as by this act, certain stamp duties called progressive duties, are imposed upon deeds and instruments in respect of certain quantities of words contained therein, together with any schedule, receipt or other matter put or endorsed thereon, or annexed thereto, and that doubts were entertained whether such progressive duties were chargeable on any deed or instrument, in respect of the words contained in any other deed or instrument liable to stamp duty, and duly stamped, which may be put or endorsed thereon, or annexed to or referred to in or by such first-mentioned deed or instrument, and that it was expedient to remove such doubts, proceeds to enact, that the said progressive duties shall not be deemed or held to be, *or* to have been imposed or chargeable upon any deed or instrument, in respect of the words or any quantity of words contained in any other deed or instrument liable to stamp duty, and duly stamped, which may or may have been put or endorsed upon, or annexed to such first-mentioned deed or instrument, or which may be or may have been in any manner incorporated with or referred to in the same: (sect. 11.)

Want of stamp in a schedule referred to in a deed will not affect the validity of the deed.

And where such schedule, &c. is not annexed to the deed, but is merely referred to in it, the want of a stamp on such schedule, &c. will only affect that instrument, but will in nowise invalidate that which refers to it: (*Duck* v. *Braddyll*, Mc. Clel. 217.)

Want of stamp does not vitiate instrument, but merely renders it inadmissible in evidence.

Neither, in point of fact, does the want of a stamp invalidate any instrument; all it does is, to prevent its being received in evidence until the proper stamp is affixed to it, which, when done, will cause the assurance to operate in precisely the same manner as if the proper stamps had been attached to it at the time of execution,

thus giving it a retrospective operation as from the period of its date: (*Rex* v. *Bishop of Chester*, 1 Str. 264; *Doe* v. *Whittingham*, 4 Taunt. 20; *Rogers* v. *James*, 7 Taunt. 70; *Robinson* v. *Mac Donnell*, 3 Mau. & Selw. 234.)

Deed defective, but properly stamped, is confirmed by a subsequent deed, the latter will not require an *ad valorem* stamp.

Where a deed stamped with a proper *ad valorem* stamp proves defective, on account of some necessary formality having been omitted, and a deed of confirmation is afterwards made, no fresh *ad valorem* duty will attach upon the latter assurance, which will be properly charged an ordinary 35*s.* deed stamp. Thus in *Doe d. Priest* v. *Weston* (11 L. J. Rep., N. S., 17, Q. B.; S. C., 2 Ad. & El., N. S., 249; 2 Gale & Dav. 582), where a vendor being abroad, the conveyance was executed by his attorney under a power given by the vendor, but which turned out to have been improperly executed, so that the deed was defective, it was nevertheless determined that a deed of confirmation, executed by the vendor on his return to England upon a 35*s.* stamp, and endorsed on the defective conveyance, which was stamped with the proper *ad valorem* stamp, was sufficient; notwithstanding, it was objected that as the prior deed passed nothing, the deed of confirmation operated as a conveyance, and required to be stamped with an *ad valorem* duty accordingly.

When a deed contains several distinct matters, a distinct stamp will be required in respect of each.

Where a deed contains several distinct matters, a distinct stamp will be required in respect of each; as in the case already instanced of a purchase and mortgage by the same instrument. So, in the case of a marriage settlement, if any of the settled property is *bonâ fide* purchased, and such conveyance is included in the deed of settlement, then an *ad valorem* stamp upon such purchase must be attached, in addition to the stamps upon the settlement: (*Lessee Murphy* v. *Conelly*, 6 Ir. Law R. 116.) But the duty upon a purchase will not attach unless in the case of an actual sale;

CHAP. XV.

Conveyances and deeds in general.

and not where such conveyance is a mere family arrangement between the parties. Thus, in *Denn ex dem. Manifold* v. *Diamond* (4 B. & C. 243; 6 D. & R. 328), a father by deed, reciting that he had resolved and intended to give and assure unto his son, as well in consideration of natural love and affection, as also in consideration of the provision the son had that day made (by bond) of 1,500*l.*, in augmentation of the portions or fortunes of his sisters, conveyed certain estates to his son in fee, the court held the transaction was not a sale, but a mere family arrangement, notwithstanding, it was contended the deed was subject to *ad valorem* duty as a conveyance: (see also *Massey* v. *Nanney*, 3 Bing. N. C. 478; *Re Kerry Glazier*, 3 Ir. Cir. Rep. 396; *Blandy* v. *Herbert*, 9 B. & C. 396.)

Ad valorem duty chargeable on principal, or only deed of conveyance.

The *ad valorem* duty is charged on the principal, or only deed of conveyance, but it is nevertheless provided by the statute 55 Geo. 3, c. 184, that where in any case not thereinbefore specially provided for, of several deeds or instruments in writing, a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed, and to pay the *ad valorem* duty thereon accordingly; and that if necessary, the other deeds, instruments or writings on which a doubt shall have arisen, shall be stamped with a particular stamp for denoting or testifying the payment of the said *ad valorem* duty, upon the deeds and instruments being previously produced, and appearing to be duly stamped in all other respects. In addition to this protection, the statute 13 & 14 Vict. c. 97, after reciting that doubts frequently arise as to the stamp duties with which some deeds or instruments are chargeable, and that it is expedient that provision should be made whereby such doubts may be removed, enacts, "that when any deed or instrument liable

13 & 14 Vict. c. 97, s. 14.

to stamp duty, whether previously stamped or otherwise, shall be presented to the commissioners of inland revenue, at their office, and the party presenting the same shall desire to have the opinion of the said commissioners as to the stamp duty with which such deed or instrument in their judgment is chargeable, and shall tender or pay to the said commissioners a fee of 10*s.* (which shall be accounted for and paid over as part of Her Majesty's revenues arising from stamp duties), it shall be lawful for the said commissioners, *and they are hereby required* to assess and charge the stamp duty to which in their judgment such deed or instrument is liable, and upon payment of the stamp duty so assessed and charged by them, or, in the case of a deed or instrument insufficiently stamped, of such a sum as, together with the stamp duty already paid thereon, shall be equal to the duty so assessed and charged, and upon payment of the amount also payable by way of penalty (if any), payable on stamping such deed or instrument, to stamp such deed or instrument with the proper stamp or stamps denoting the amount of duty so paid, and thereupon, or if the full stamp duty to which in the judgment of the said commissioners such deed or instrument shall be liable, shall have been previously paid and denoted upon the same in manner aforesaid, the said commissioners shall impress upon such deed or instrument a particular stamp, to be provided by them for that purpose, with such word or words, or device or symbol thereon, as they shall think proper in that behalf, and such last-mentioned stamp shall be deemed and taken to signify and denote that the full amount of stamp duty with which such deed or instrument is by law chargeable has been paid, and every deed or instrument upon which the same shall be imposed, shall be deemed to have been duly stamped, and shall be receivable

CHAP. XV.

Conveyances and deeds in general.

in all courts of law and equity, notwithstanding any objection made to the same as being insufficiently stamped, save and except that such last-mentioned stamp shall not be impressed upon any deed or instrument chargeable with *ad valorem* duty, or by reference to the head of bond or mortgage in the schedule to this act, where the same is made as a security for the payment or transfer, or re-transfer of money or stock, without any limit as to the amount thereof; and provided always, that nothing herein contained shall be deemed or construed to extend to require or authorize the said commissioners to stamp as last aforesaid, any probate of a will or letters of administration, or to stamp, as last aforesaid, any deed or instrument after the signing or execution thereof, in any case in which the stamping thereof is expressly prohibited by any law in force (sect. 14); and parties dissatisfied with the determination of the commissioners may appeal to the Court of Exchequer, and the duty shall then be paid according to the decision of that court: (sect. 15.)

Practical observations.

The above provisions are exceedingly useful, and cannot fail to give universal satisfaction to the profession, and the small costs incurred are amply made up by the removal of all doubt as to the sufficiency of the stamps which ought to be employed in any transaction in which any difficulty arises as to the construction of the Stamp Acts.

43 Geo. 3, c. 127; as to deeds having the wrong stamps affixed to them.

The statute 43 Geo. 3, c. 127, also enacted, with respect to deeds having wrong stamps affixed to them, that any vellum, &c. upon which any instrument (except bills or notes) was engrossed, liable to be stamped with a stamp of a particular denomination, whereon was impressed a stamp of different denomination, but of equal or greater value, such instrument might be stamped without payment of any penalty, and

the same is also re-enacted by the stat. 55 Geo. 3, c. 184, except in cases where the stamp is particularly appropriate to any other instrument. These enactments seem, however, to be superfluous, as far as deeds are concerned, as they have never been marked with any specific character, and although scheduled out as conveyances, leases, mortgages, &c., yet no stamp has ever been struck bearing any one of those titles; consequently a stamp of sufficient amount is equally applicable to every description of deed.

55 Geo. 3, c. 184.

Duplicates and counterparts of conveyances, leases and mortgages, were exempted from *ad valorem* duties, but were charged with the ordinary 35*s.* deed stamp, under the head of "Conveyance not otherwise provided for." Counterparts of leases were assessed with a duty of 30*s.* only; but duplicates of settlements required the same stamps as the original deeds: (55 Geo. 3, c. 184, schedule Settlement.)

As to duplicates and counterparts.

It may be proper also to remark, that under the provisions of 55 Geo. 3, c. 184, where there are duplicates of instruments chargeable with an *ad valorem* duty exceeding 2*l.*, one of them only is to be charged therewith, and the other or others to be charged with the ordinary duty on deeds or instruments of the same kind, not upon a sale; and on the whole being produced duly stamped as thereby required, the latter shall also be stamped with a particular stamp for denoting or testifying the payment of the said *ad valorem* duty.

Provisions of 55 Geo. 3, c. 184, as to several duplicates.

Now, under the statute 13 & 14 Vict. c. 97, a duplicate or counterpart of any deed or instrument of any description whatever chargeable with any stamp duty, where such duty exclusive of progressive duty amounts to less than 5*s.*, is assessed with the same duty as the original instrument, including also the progressive duty, if any, thereon; and where the duty amounts to or exceeds 5*s.*, a duty to that amount, with a

13 & 14 Vict. c. 97.

CHAP. XV.

Conveyances and deeds in general.

progressive duty of 2*s.* 6*d.* With a proviso, that in the latter case the duplicate or counterpart shall not be available, unless stamped with a particular stamp for testifying the payment of the proper stamp duty on the original instrument, which particular stamp is directed to be impressed upon such duplicate or counterpart on the same being produced, together with the original deed or instrument; and on the whole being duly executed and stamped in all other respects.

How far an alteration in instrument will affect the stamps.

It may be laid down as a general rule, that any material alteration in a deed after it has begun to operate, will render fresh stamps necessary; at the same time it must be borne in mind, that as a deed takes effect from the delivery, and not from the date, an alteration made subsequently to the date, but prior to the delivery, will not affect the stamp. This is a matter of fact to be determined by a jury, and evidence will be admissible to show that the deed was delivered on a different day from that set out at the head of it: (*Steel* v. *Mart*, 4 B. & C. 272; *Hall* v. *Cazenove*, 4 East, 477; *Doe* v. *Telling*, 2 East, 257; *Styles* v. *Warde*, 4 Bing. 508; *Bishop* v. *Chambre*, 1 M. & M. 116.)

A deed made between several parties may operate at different times.

Where a deed is made between several parties, it is considered as one entire transaction, operating as to the different parts from the time of execution by each, yet not so as to be absolutely perfect until all the conveying parties have signed; and it seems that any alteration made in the deed during the progress of such a transaction, leaves it valid as to the party previously executing, provided the alteration does not affect the situation in which they stood. Hence, where a deed made between a former mortgagee and a new lender, purported to surrender all the estate and interest of the mortgagee to the mortgagor, and then the mortgagor conveyed the fee to the new lender, and in the interval between the execution of the deed by the mortgagee and the

mortgagor, several blanks, not concerning the mortgagee, were filled in, the court held that the deed, when executed by the mortgagee, was complete as to him; but with respect to the other parties, it was in progress only, and the alterations made were only for the purpose of rendering it conformable to their wishes. The court also observed, that there was no authority which said (and it would be contrary to common sense if there were one) that an alteration so made, not operating on the provisions relating to the party previously signing, should avoid it. Here the alterations did not in any respect touch the part of the deed affecting the mortgagee. As to him, therefore, there were alterations made in an immaterial part, and being made whilst the deed was in progress, the authorities cited did not prove the instrument invalid: (see also *Doe d. Lewis* v. *Bingham*, 4 B. & A. 675; *Oxenham* v. *Esdaile*, 2 Y. & J. 501; *Philpot* v. *Dobbinson*, 6 Bing. 104; *Wilson* v. *Woolfreys*, 6 Mau. & Sel. 341.)

As to the filling up of blanks after execution.

From the authorities above referred to, it also seems that the filling up of the blanks after the execution of the instrument by parties whom such blanks do not in anywise concern, will not invalidate the testimony of the deed: (see also *Texiner* v. *Evans*, 1 Anstr. 228.) And it has also been held that a blank in a composition deed filled up with the amount of a debt, after execution, was a completion, and not an alteration of the deed: (*Hudson* v. *Revett*, 5 Bing. 389.) And where a minor is made a party to a conveyance, but which he does not execute until after he comes of age, this will not render a fresh stamp necessary; for though the parties sign at different times, yet the whole must be considered as one and the same transaction, and is not essentially different from a composition deed, which, as already remarked, it is clearly settled

CHAP. XV.

Conveyances and deeds in general.

Feme covert.

may be signed by each creditor without incurring a repetition of duty: (*Bowen* v. *Ashley*, 1 N. R. 278.) And it seems that if a *feme covert* executes a deed during her coverture, which is simply void, and afterwards becoming discovert re-executes the deed, no fresh stamp will be necessary: (*Goodright* v. *Statham*, 1 Cow. 201); because the deed being void, nothing passed by it; consequently the stamp had no operation until re-execution, which, in point of fact, was the only effectual execution. But the law is otherwise with respect to a confirmation by a remainder man, by indorsing a lease which had been granted by a tenant for life; because, in the latter case, the lease has taken effect, and the stamp has been in operation, both of which have expired with the lessor, so that nothing short of a new lease properly stamped could give the tenant any legal interest: (*Dowling* v. *Mill*, 1 Mad. 548.) Neither will the correction of a mistake in certain instances be construed as such an alteration as to render a fresh stamp requisite: (as to which see *Cole* v. *Parker*, 12 East, 475; *Knight* v. *Crockford*, 1 Esp. N. P. C. 189; *Sawtell* v. *London*, 5 Taunt. 362; *Coke* v. *Brummell*, 8 Taunt. 439; *Lyburn* v. *Warrington*, 1 Stark. N. P. C. 163.)

Remainderman.

When a re-execution of a deed will not give it validity, when void for the non-observance of proper formalities.

Neither will re-execution give validity to a deed which has become void on account of the non-observance of some necessary formality, as, for example, the want of enrolment of a deed of bargain and sale, or of a disentailing assurance within six months after the delivery; for the re-execution makes it a new deed, and the enrolment will relate to that time, and not to the former delivery. But the law is otherwise with respect to feoffments, which are defective for want of livery of seisin; because there the execution does not operate until delivery of seisin, which may be made at any time during the lives

Feoffment.

of the parties; consequently, if the feoffment be defective for want of delivery of seisin, a fresh stamp will not become requisite by making that perfect which was altogether incomplete and inoperative: (see Cov. on Stamps, 127.)

As to alteration or obliteration after execution.

An alteration, or obliteration by a stranger, or by accident, will not have the effect of avoiding the instrument, or of rendering a fresh stamp necessary: (*Henfree* v. *Bromley*, 6 East, 308.) But if the alteration were made by a person claiming under the instrument, it will avoid the whole of it, so far as that party's interests are concerned: (as to which see *ante*, p. 236.)

All instruments of conveyance, if made within the united kingdom, must be duly stamped, although relating to property situated abroad.

If the instrument is made within this kingdom, that is to say, within Great Britain or Ireland, it is immaterial whether it relates to property at home or abroad, as the same duties will attach in either case: (*Stonelake* v. *Bubb*, 5 Bur. 2675.) And the statute 1 & 2 Geo. 4, c. 55, charges with stamp duty all instruments which deal with property situate within any part of the United Kingdom, or which relate to any act to be done there or elsewhere, whether the same shall be engrossed and executed at any place or places within the United Kingdom, or at any place or places not within the United Kingdom, and whether any of the parties shall be resident in or executing the same in any place either in Great Britain or Ireland, or elsewhere.

As to instruments executed abroad.

With respect to deeds or other instruments executed abroad, the statute 13 & 14 Vict. c. 97, empowers the commissioners of inland revenue to stamp such instruments without the payment of any penalty, provided such deed or instrument shall be brought to them for that purpose within two calendar months from the time when the same shall have been received in the United Kingdom: (sect. 13.)

Assignments by sheriff.

Assignments by a sheriff of property sold under an execution are liable to the same *ad valorem*

Conveyances and deeds in general.

duties as upon any other sales, nor is there any thing in the Stamp Acts to warrant any other conclusion. In a case that occurred in Ireland the question was certainly mooted (*Lessee Nangle* v. *Ahern*, 3 Ir. Law Rep. 41); but Lord Chief Baron Brady observed, "It is true we are not to bring parties within the meaning of an act imposing duties on the subject, unless its words be clear and unambiguous, but on the other hand we are not to seek, by a strained construction of the language of the acts, to create exemptions not provided for by the Legislature.

Conveyances by assignees of bankruptcy or insolvency.

Conveyances by the assignees of a bankrupt or insolvent are likewise chargeable with the *ad valorem* duties; as the exemption from stamp duties, in proceedings under the bankrupt and insolvent acts, do not extend to purchasers, except in the instance of an agreement for the sale of a bankrupt's estate, which, it seems, is exempt from all stamp duty whatever (*Flather* v. *Stubbs*, 2 Gale & Dav. 190); but this only relates to the instrument of contract, and does not affect the actual deed of conveyance.

Copyholds.

Conveyances of copyhold estates are charged with the same duties as on a sale, which, if the surrender is made out of court, must be attached to the memorandum of surrender, and if made in court, to the copy of court roll; and where there are several deeds or instruments, such of them as are not charged with the *ad valorem* duty are to bear the stamps appropriate to their proper denomination.

Surrenders.

Surrenders and other instruments relating only to copyholds or customary estates whose clear yearly value should not exceed 20*s*., were exempted out of the preceding duties charged by the 55 Geo. 3, c. 184, but they were thereinafter otherwise charged, and still are chargeable, viz., a duty of 1*l*., which was charged upon every surrender or admission, whether made in or out

of court, where the yearly value exceeded the sum of 20*s.*, and where it did not exceed that sum, a duty of 5*s.*, with a progressive duty to the same amount.

Voluntary grants.

Voluntary grants also made by the lord or lady of any manor of any copyhold or customary lands or hereditaments for a life or lives, for a pecuniary consideration, and the copies of court roll of such grants, were also within the above exemptions from *ad valorem* duty, but such voluntary grant, or the memorandum thereof, whether made in or out of court, and with or without any admittance thereon, shall exceed 20*s.*, is charged with a duty of twice 5*s.*, and where it shall exceed 5*s.* with a duty of twice 5*s.*, and with a progressive duty of 1*l.* in either case.

Formerly optional but now compulsory on commissioners to stamp on payment of the duty and penalty.

It was formerly optional with the commissioners to stamp or not, as they thought proper, an instrument on payment of the duty and penalties (*Rippiner* v. *Wright*, 2 B. & A. 478); still, as the object of the Stamp Acts was to benefit the revenue, they rarely, if ever, refused to stamp, on the duties and penalties being tendered to them; but the act of 13 & 14 Vict. c. 97, renders it compulsory on the commissioners to stamp on payment of the duty and penalty: (sect. 12.)

The penalty imposed by statute 5 & 6 Will. & Mary, c. 21, for omitting the proper stamp, was 500*l.* But this enormous exaction was shortly afterwards reduced to 5*l.* (stat. 6 & 7 Will. 3, c. 12, s. 7.) It was soon afterwards, however, increased to 10*l.* (stat. 9 & 10 Will. 3, c. 25, s. 60), and afterwards again reduced to 5*l.* But as each of these acts imposed a penalty of 5*l.*, that penalty would have attached upon every stamp omitted, so that if three stamps had been necessary, and no stamp at all had been affixed, a penalty of 15*l.* would have been incurred; and

CHAP. XV.

Conveyances and deeds in general.

Statute 13 & 14 Vict. c. 97.

a penalty of 10*l.* if one stamp only had been attached. But since the Stamp Consolidation Acts, as one duty only is now payable, so one penalty only can now be charged, which, by the act 13 & 14 Vict. c. 97, is now charged at 10*l.*, in addition to the whole duty, or deficiency of duty, in lieu of any former penalty imposed by law in the like case ; and when the whole of the duty or deficiency of duty to be denoted by the stamps required to be impressed on such deed or instrument shall exceed the sum of 10*l.*, then a penalty, in addition to the 10*l.* in the shape of interest, at 5*l.* per cent. per annum, on the duty, or deficiency of duty, from the time of the execution of such deed or instrument ; with a proviso that if such interest shall exceed in amount the said duty or deficiency of duty, then there shall be paid by way of penalty, in addition to the said duty or deficiency of duty, and the said sum of 10*l.*, and in lieu of the said interest, a sum equal to the amount of the said duty or deficiency of duty: (sect. 12.)

What will be evidence of payment of penalty and duties.

Upon payment of the duty and penalty, the practice formerly was to indorse a receipt for the penalty, which was deemed conclusive evidence of such payment having been paid : (*Apothecary's Company* v. *Jernyhough*, 2 Car. & P. 438.) But now, under the recent enactment, the commissioners are required, upon payment of the duty and penalty, to cause such deed or instrument to be stamped with a stamp for denoting the payment of such duty and penalty, in lieu of the receipt formerly given: (sect. 14.)

As to the remission of penalties.

Under the pre-existing law, the commissioners had a power of remitting the penalties on an affidavit making out a proper case for lenity, as in a case of urgent necessity, where the circumstances required an immediate execution at so late an hour, or at such a distance from any stamp office, that a proper stamp could not have

been procured within the time required: (see Cov. on Stamps, 44.) The statute 37 Geo. 3, also expressly provided, that if an instrument not stamped without intention of fraud, be brought to be stamped within *sixty days* after the execution, the commissioners *may* remit the penalty; and this time was afterwards extended to twelve months by statute 44 Geo. 3, c. 98, except as to bills, notes, drafts, and receipts. Still this remission of penalties rested entirely with the commissioners, who have either remitted or retained them as they thought proper; and by a resolution of the general board, notice was given, that after the 1st day of February, 1822, no instrument signed or executed by any party thereto, except as thereinbefore mentioned, would be permitted to be stamped without payment of a penalty, unless sufficient and satisfactory reasons were assigned by affidavit of the execution of such instrument before the same was duly stamped; but that agreements for 20*s.* duty would be stamped without any penalty within twenty-one days from the date. Now, under the recent statute of Victoria, the commissioners, upon oath or otherwise, to their satisfaction, that any deed or instrument hath not been duly stamped previous to execution by reason of accident, mistake, inadvertency, or urgent necessity, and without any wilful intention to defraud the revenue of the duty, if such deed or instrument shall, together with the duty thereon, be brought to them, in order to be stamped within twelve calendar months after execution, the said commissioners are empowered to remit either the whole or any portion of the penalty, and to cause such deed or instrument to be stamped on payment of the duty chargeable thereon by law. But this power is not to extend to instruments for the stamping of which, after the signing

CHAP. XV. *Conveyances and deeds in general.*

thereof provision is made, or to cases where the stamping is by law prohibited: (sect. 12.)

As to spoiled stamps.

Whenever any stamps have been inadvertently or undesignedly spoiled, obliterated, or by any means been rendered unfit for their intended purpose, the parties upon making oath to that effect might have obtained fresh stamps from the commissioners (stats. 5 Geo. 3, c. 46, s. 30; 50 Geo. 3, c. 43.) But this allowance will not be made if the deed has been actually executed, unless it is discovered that the instrument to which it is attached is by some mistake altogether unfitted for the purpose, and the mistake cannot be rectified by reason of the death of the parties thereto, in which case the commissioners are empowered to allow the stamp on such totally inoperative instruments within two calendar months after the date, provided the deed be delivered to them to be cancelled, and the facts are satisfactorily proved on affidavit. Instruments on wrong stamps are also allowed to be exchanged as circumstances may require, on satisfactory evidence of the mistake. But, generally speaking, no allowance would have been made for any stamp after six months from the time it is spoiled or misused.

The allowance made by the commissioners for spoiled stamps was to give a transferable ticket for an equal number of stamps in one or several amounts, instead of making a pecuniary payment. But little inconvenience was found to result from this practice, as cash might generally have been obtained for these tickets from the stationers, either in full or upon a very small discount. By a recent statute, however, the commissioners are authorized to refund in money in all cases of spoiled stamps: (stat. 3 & 4 Will. 4, c. 97.)

Conveyances of property

The act of Victoria does not come into opera-

tion until the 1st of October, 1850, as to assurances whatever, and as it increases the amount of duty to be paid on sales or mortgages, and settlements of large amount, a proviso has been inserted to indemnify purchasers, mortgagors or settlors, from the increased duties, where the contract for such sale, mortgage or settlement was entered into, and the abstract of title duly delivered prior to the 20th day of March, 1850, where such conveyances, mortgages or settlements, are executed subsequently to the said 10th day of October, 1850, but prior to the 31st day of March, 1851.

prior to 20th March, 1850, exempted from increased stamp duty.

In order also to remove all doubts as to the stamping of deeds in England or Ireland, relating to real or personal property in Ireland, the 17th section of the statute 13 & 14 Vict. c. 97, after reciting that it is considered that under the provisions of an act passed in the first and second years of the reign of King George the Fourth, intituled *An Act to remove doubts as to the amount of Stamp Duty to be paid on Deeds or other Instruments under the several Acts in force in Great Britain and Ireland,* any deed, agreement or other instrument which relates wholly to real or personal property in Ireland, or of any other matter or thing (other than the payment of money), to be done in Ireland, cannot, after the engrossing thereof, be properly stamped elsewhere than at the stamp office in Dublin, and also that any deed, agreement, or other instrument, which relates to any real or personal property situate elsewhere than in Ireland, or to any matter or thing (other than the payment of money), to be done elsewhere than in Ireland, cannot, after the engrossing thereof, properly be stamped elsewhere than at the stamp office in London: and further reciting that such construction of the said act is the occasion of inconvenience, proceeds to enact, that any such deed

When deeds may be stamped either in London or Dublin.

1 & 2 Geo. 4, c. 55.

CHAP. XV.

Conveyances and deeds in general.

or instrument as aforesaid, may and shall, without regard to the place where the property, matter or thing to which the same may relate or be situate, or may be to be done, be stamped with such duty or duties as the same may be liable to, either in the stamp office in London, or in the stamp office in Dublin, according as the same shall for that purpose be presented at either of the said offices.

SECTION IV.

LEASES.

There are two kinds of *ad valorem* duties upon leases; one where a pecuniary consideration is given by way of fine or foregift, and the other upon the annual rental of the property. The amount of the former will, as soon as the new Stamp Act comes into operation, be the same as on a conveyance of lands for a similar sum, and the duty on the rental will be governed by the amount of rental, as set out in the new graduated scale, which, as may be perceived by the Comparative Table of the Old and New Stamp duties annexed to the present chapter, are now considerably reduced. With respect, however, to leases granted for a pecuniary consideration, the new Stamp Act, 13 & 14 Vict. c. 97, contains a similar exception as was contained in the statute 55 Geo. 3, c. 184, as to leases for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, by whomsoever granted, and leases for a term absolute, not exceeding twenty-one years, granted by ecclesiastical corporations aggregate or sole.

Two kinds of *ad valorem* duties payable on leases.

Under both the statutes also, 55 Geo. 3, c. 184, and 13 & 14 Vict. c. 97, leases granted in consideration of a sum of money, or by way of a fine, and also of a yearly rent amounting to 20*l.* or upwards, are charged with both the *ad valorem* duties payable for a lease in consideration of

a fine, and for a lease in consideration of a rent only for the same amount (save and except the leases and tacks hereinbefore excepted.)

Leases of mines and minerals.

Lease or tack of any *mine* or *minerals*, or other property of a like nature, either with or without any other lands, tenements, hereditaments, or heritable subjects, *where any portion of the produce* of such mines or minerals *shall be reserved to be paid in money or kind;*

How *ad valorem* duties are to be regulated.

If it shall be stipulated that the value of such portion of the produce *shall amount at least* to a given sum per annum, or if such value *shall be limited not to exceed* a given sum per annum, to be specified, in such lease or tack, then the said *ad valorem* duty on leases shall be charged in respect of the *highest* of such sums so given or limited for any year during the term of such lease or tack.

When *ad valorem* duties will be chargeable in respect of yearly sum reserved.

And where any *yearly sum* shall be reserved in addition to, or together with such produce, relative to the yearly amount or value of such produce, there shall be no such stipulation or limitation as aforesaid, the said *ad valorem* duty shall be charged in respect of such *yearly sum.*

When *ad valorem* duties will be charged upon yearly sum, and value of yearly produce.

And where *both a certain yearly sum, and also such produce* relative to the yearly amount or value of which there shall be such stipulation or limitation as aforesaid shall be reserved, the said *ad valorem* duty shall be charged on the *aggregate* of such yearly sum, and also of the highest yearly amount or value of such produce.

General Regulations as to Leases and Tacks.

Where the reserved rents shall consist of corn, grain, or victual.

Where, in any of the aforesaid several cases of lease or tack, any fine, premium, or grassum, or any rent, payable under any lease or tack, shall consist wholly or in part of *corn, grain, or victual*, the value of such corn, grain, or victual shall be ascertained or estimated at and after any

permanent rate of conversion which the lessee may be specially charged with, or have it in his option to pay; and if no such permanent rate of conversion shall have been stipulated, then in *England* and *Ireland* respectively at and after the prices, upon an average of twelve calendar months preceding the first day of *January* next before the date of such lease or tack, of the average prices of *British* corn published in the *London Gazette* in the manner directed by any act in force for the commutation of tithes in *England* and *Wales;* and in *Scotland*, at and after the fiars prices of the county in which the lands or any part thereof lie, upon an average of seven years preceding the date of such lease or tack; and such respective values shall be deemed and taken to be the fine, premium, or grassum, or yearly rent, or part thereof respectively, as the case may be, in respect whereof the *ad valorem* duty shall be charged as aforesaid.

Where separate and distinct fines shall be paid to several lessors.

And where *separate* and *distinct* fines, premiums or grassums shall be paid to several lessors, being joint tenants, tenants in common, or coparceners, in *England* or *Ireland*, or proprietors *pro indiviso* in *Scotland*, who shall by one and the same deed or instrument jointly or severally demise or lease the lands, tenements, hereditaments or heritable subjects of which they are such joint tenants, tenants in common or coparceners, in *England* or *Ireland*, or proprietors *pro indiviso* in *Scotland*, or where *separate* and *distinct* rents shall be by one and the same deed or instrument reserved or made payable, or agreed to be reserved or made payable, to the lessor, or to several lessors, being such joint tenants, tenants in common, or coparceners, in *England* or *Ireland*, or proprietors *pro indiviso* in *Scotland*, the *ad valorem* duties shall be charged in respect of the *aggregate*

Where separate and distinct rents shall be reserved.

CHAP. XV.

Leases.

amount of such fines, premiums or grassums, and of such rents respectively.

Where any person shall contract for a lease, and shall sell his interest to another, to whom such lease shall be afterwards granted.

And where any person, having contracted for, but not having obtained, a lease of any lands or other property, shall contract to sell such lands or other property, or any part thereof, or his right or interest therein or thereto, to any other person, and a lease shall accordingly be granted to such other person, the purchase-money or consideration which shall be paid or given or agreed to be paid or given to the person immediately selling to such lessee shall be set forth in such lease, and such lease shall be charged as well with the said *ad valorem* duty on such purchase-money or consideration as with the duty on the purchase-money or consideration or rent paid or reserved to the lessor.

Lease or tack, of any kind, *not otherwise charged*, is charged with a common deed stamp:

Provided always, that no *ad valorem* duty shall be charged in respect of any *penal rent*, or increased rent in the nature of a penal rent, reserved in any such lease or tack as aforesaid.

Any assignment or surrender of a lease or tack upon any other occasion than a sale or mortgage, a duty equal to the *ad valorem* duty with which a similar lease or tack would be chargeable under this act.

Provided always, that where a similar lease or tack would be chargeable under this act with any stamp duty amounting to 1*l.* 15*s.* or upwards, then such assignment or surrender shall be chargeable only with a duty of 1*l.* 15*s.*

Provided also, that no stamp duty, except the said *ad valorem* duty, shall be chargeable for or in respect of any lease, whether in possession, reversion, or remainder, expressed to be granted in consideration of the surrender of an existing lease and also of a sum of money.

Leases of waste lands, when exempted from stamp duty.

Leases of waste and uncultivated lands, to any poor or labouring persons for any term or terms not exceeding three lives, or ninety-nine years, where the fine shall not exceed 5*s.*, nor the reserved rent one guinea per annum, and the counterpart and duplicates of such leases are exempted from all stamp duty. But this exemption will not extend to building leases.

SECTION V.

MORTGAGES, BONDS, WARRANTS OF ATTORNEY, ETC.

Stamp duties regulated by principal sum advanced without regard to interest.

MORTGAGES, bonds, and warrants of attorney, when given as a security for the payment of money, were, and still are, all of them, subjected to the same amount of stamp duties. This duty is regulated by the principal sum secured, without regard to interest, banker's commission, or charges of a like kind; hence, where the sum secured by a bond is limited to 1,000*l.*, a stamp sufficient to cover that sum will entitle the obligee to sue for interest and commission, as well as for the 1,000*l.* (*Frith* v. *Rotheram*, 10 Jur. 208; overruling *Dickson* v. *Cass*, 1 B. & Ad. 343.)

No stamp duty payable in respect of interest accrued.

Neither is any duty payable on interest already become due; so that if a bond be given for a debt of 3,000*l.* and bygone interest, and is stamped only for 3,000*l.*, it will be sufficient. The words, "definite and certain sum," are considered to refer to the principal sum only; and the interest, whether bygone or subsequent, is in the nature of damages for the non-payment of the sum advanced, and does not fall within the meaning of a definite and certain sum secured: (*Barker* v. *Smark*, M. & W. 50; *Dixon* v. *Robinson*, 1 Moo. & R. 115; *Foreman* v. *Leyes*, 5 Car. & P. 419; *Dearden* v. *Binns*, 1 Man. & Ry. 131; *Pierrepont* v. *Gower*, 4 M. & G. 795; 2 Dowl. N. R. 652.)

As to bonds

Under the statute 55 Geo. 3, c. 184, schedule

"Mortgage," where a bond was given by way of a collateral security to a mortgage or other instrument in writing, and bore even date therewith, and was referred to in such bond, a 1*l.* stamp would have been sufficient to cover it, whatever the amount of the mortgage might have been (55 Geo. 3, c. 184, schedule "Mortgage"); that is, provided the bond bore even date with the mortgage, or was referred to in it, for if it bore a different date it would have required the same *ad valorem* duty as an ordinary bond for the same amount, although, in point of fact, it was executed simultaneously with the mortgage deed: (*Wood* v. *Norton*, 9 B. & C. 885.)

given by way of collateral security.

A similar enactment to that contained in the act 55 Geo. 3, c. 184, with respect to mortgage bonds bearing even date with mortgage, is contained in the new Stamp Act (13 & 14 Vict. c. 97); but in the latter, where the sum secured does not exceed 800*l.*, the same *ad valorem* duty is payable as on a mortgage for securing the like amount, and where the sum shall exceed 800*l.*, then a duty of 1*l.*

Statute 13 & 14 Vict. c. 97.

With respect to original mortgages, any conveyance of land or property whatsoever, in trust to be sold, or otherwise converted into money, which shall be intended only as a security, and shall be redeemable before the sale or other disposal thereof, either by express stipulation, or otherwise, *except where such conveyance shall be made for the benefit of creditors generally, or for the benefit of creditors specified, who shall accept the provision made for the payment of their debts in satisfaction thereof, or who shall exceed five in number;* will be classified under that head. As will also any defeasance, letter of reversion, back bond, declaration, or other deed or writing for defeating or making redeemable or explaining or qualifying any conveyance, disposition, assignation or tack of any landed estate which shall

What species of assurance will amount to a mortgage.

CHAP. XV.

Mortgages, bonds, warrants of attorney, &c.

Every instrument intended as a mortgage will have that operation.

be apparently absolute, but intended only as a security.

Hence, whatever agreements, clauses or covenants there are in a conveyance, and notwithstanding they seem to import an absolute disposition or conditional purchase, still, if upon the whole it appears to have been the intention of the parties that such conveyance should only be a mortgage, or pass a redeemable estate, it will always be so construed, and should be stamped accordingly: (*Howard* v. *Harris*, 1 Vern. 190; S. C. 2 Ch. Ca. 61, 147; 1 Eq. Ca. Abr. 311, pl. 11; *James* v. *Oades*, 2 Vern. 402; S. C. 2 Ventr. 365.) Nor will the mere absence of a covenant to pay the money make it less a mortgage: (*Howell* v. *Price*, Pre. Ch. 421; *Fry* v. *Porter*, 1 Ch. Ca. 141; *Howard* v. *Harris*, 1 Vern. 33; *Wellington* v. *Mackintosh*, 2 Atk. 569; *Mitchell* v. *Harris*, 2 Ves. sen. 129.) Hence equity will not permit the right of redemption to be confined to the lifetime of the mortgagor: (*Jason* v. *Eyres*, 2 Ch. Ca. 53; *Kelvington* v. *Gardiner*, 1 Vern. 192, cited; *Spurgeon* v. *Collier*, 1 Eden, 55; *Newcombe* v. *Bonham*, 1 Vern. 214; *Ord* v. *Smith*, Sel. Ca. Ch. 9; *Price* v. *Perrie*, 2 Freem. 258; *Floyer* v. *Lavington*, 1 P. Wms. 261; *Goodman* v. *Grierson*, 1 Ball & B. 278; *Seton* v. *Slade*, 7 Ves. 273); or to be restricted to a particular line of heirs, as heirs of the body (*Howard* v. *Harris*, *sup.*); for in either case the heir-general of the mortgagor will be permitted to redeem, which equity, it has been determined, will extend also to an assignee (1 Vern. 31), upon the well-established equitable principle, of "once a mortgage always a mortgage:" (*East India Company* v. *Atkyns*, Com. 349.)

Hence, even when there is an express contract between the mortgagor and mortgagee, *at the time of the loan*, that in case of default in pay-

ment the latter shall be entitled to purchase the lands absolutely for a specified sum, a court of equity would not enforce the contract, or allow it to debar the mortgagor of his right of redemption: (*Price* v. *Perrie*, 2 Freem. 258; *Willett* v. *Winnell*, 1 Vern. 431; *Jennings* v. *Wend*, 2 *ib.* 520; *Bowen* v. *Edwards*, 1 Ch. Rep. 222.)

Conditional sales as distinguished from mortgages.

Still, for all this, it does not necessarily follow that every conditional sale is to be treated as a mortgage, or that a mortgagor may not give his mortgagee a preference of pre-emption, for within proper limits a conditional sale may be supported even in equity; so on the other hand, lands may be sold and conveyed, and yet the vendor may reserve to himself a power of re-purchasing within a given time and upon certain stipulations, and this will not be a mortgage, but merely a conditional sale, but which will become absolute in case the vendor fails to comply with the prescribed conditions within the appointed time. Hence, where a deed of conveyance contained a proviso that if the vendor would repay the purchase-money (950*l.*) within one year, and give the vendor 100*l.* for his pains, he should repurchase his estate. The Lord Keeper said, that where there was a clause or provision to repurchase, the time limited ought to be precisely observed, and therefore held that this was not a mortgage, but a conditional sale: (*Barrell* v. *Sabine*, 1 Vern. 268; see also *Cary* v. *Pulfore*, Pre. Ch. 95.)

To render an assurance a mortgage the remedies should be mutual.

And where a grantee of lands subjected to a limited power of redemption has not all the remedies of a mortgagee, the conveyance has been holden to be a conditional sale, and not a mortgage. The fair criterion in equity to decide whether a deed be a mortgage or not is, are the remedies mutual and reciprocal? Has the grantee all the remedies a mortgagee is entitled to? If he has not, it will be decisive to show

CHAP. XV. *Mortgages, bonds, warrants of attorney, &c.*

that the transaction between the parties was not that of a mortgage, but a conditional sale. Thus, where some lands were conveyed in lieu and satisfaction of a portion charged on them, with a clause of redemption, if the portion was paid within ten years, there being no covenant for payment of the portion, or any collateral security, a redemption was refused after the ten years; for if the produce of the sale of the lands were insufficient to discharge the portion, the grantee could have no remedy against the grantor to recover the deficiency: (*Goodman* v. *Grierson*, 2 Ball & B. 274.) So, in an earlier case (*Floyer* v. *Lavington*, 1 P. Wms. 268), a man for 800*l.* consideration granted a rent-charge of 48*l.* a year in fee, upon condition that if the grantor during his life should give notice to pay in the 800*l.* by instalments, viz. 100*l.* at the end of every six months, and should do this during his whole lifetime, the grant should be void; but there was no covenant in the deed for the grantor of the rent-charge to pay the money, and the rent-charge was much less than the interest of the money then came to (for the interest at that time was 8*l.* per cent.) After the grantor's death, the grantee of the rent-charge conveyed it over to a purchaser, since which, after the expiration of sixty years, the heir brought his bill to redeem, but it was dismissed, the court observing, that here several circumstances occurred, which, though each of them singly might not be sufficient to bar the redemption, yet all of them joined together were strong enough to prevail over it. In *Mellor* v. *Lees* (2 Atk. 494), also, the plaintiff's grandfather mortgaged the lands in fee to secure 200*l.*, and the mortgagee demised the lands to the plaintiff's father for 5,000 years, at 12*l.* a year rent for the first three years, and 10*l.* a year for the remainder of the term; and if in the space of the three years the 200*l.* was

paid, and the interest, then the premises were to be re-conveyed. Receipts were given, sometimes for interest, and sometimes for a rent-charge. The 200*l.* lent was charity money directed to be laid out in lands in fee, and the rents applied for certain charitable purposes. After a lapse of forty-eight years the plaintiff gave notice he would pay the money, but the defendant refused to take it, and insisted it was an absolute purchase, and it was so decreed by the Master of the Rolls, and on appeal, Lord Hardwicke being of the same opinion, affirmed the decree: (see also *Eadsworth* v. *Griffith*, 2 Eq. Ca. Abr. 955, p. 9; S. C. 15 Vin. Abr. 595; *King* v. *Bromley*, Eq. Ca. Abr. 595, p. 8; S. C. 5 Bac. Abr. 10; *Cotterell* v. *Purchase*, Ca. temp. Talb. 61; *Tasburgh* v. *Echlin*, 2 Bro. P. C. 265, edit. Toml.; *Williams* v. *Owen*, 12 L. J., N. S., 207, Ch.; *Sampson* v. *Pattison*, 1 Hare, 533; *Davis* v. *Thomas*, 1 Russ. & Myl. 507.) In order, however, that a conveyance may be construed as a defeasible sale, the court must be fully satisfied that it was not originally a mortgage (*Sevier* v. *Greenway*, 19 Ves. 413; *Verner* v. *Winstanley*, 2 Sch. & Lef. 393), for whatever the assurance was in the first instance, no subsequent agreement of the parties can alter its operation; if originally a mortgage, or a sale, so it must continue, with all the incidents, properties and liabilities, appertaining to those assurances respectively: (*Newcombe* v. *Bonham*, 1 Vern. 7; *Sabine* v. *Barrell*, *ib.* 268; 1 Hughes' Pract. Mort. 7-9.)

Equitable mortgages.

An agreement, contract, or bond, accompanying an equitable mortgage by deposit of title deeds, must also be stamped as an actual mortgage. But if the *ad valorem* duty is paid on such agreement, then a common 35*s.* deed stamp, with a progressive duty of 25*s.* will be sufficient to cover the latter assurance.

Duties now placed on a regularly graduated scale.

The duties on mortgages being now placed on a regularly graduated scale, those on small sums are considerably reduced, whilst on larger amounts they are proportionally increased, nor is there now any limit at which the duty now ceases, whereas, under the pre-existing law, no duties were charged upon mortgages exceeding 20,000*l.*

As to mortgages to secure moneys to be thereafter advanced.

When a mortgage was made as a security for money to be thereafter lent, where the sum was not to exceed a specified amount, then the same duty was payable as upon such specified amount; but where the sum secured was unlimited in amount, then a 25*l.* stamp, being a stamp adapted to the highest amount of mortgage security, was required: (stat. 55 Geo. 3, c. 184, schedule "Mortgage.") But now, under the new Stamp Act (13 & 14 Vict. c. 97, schedule "Mortgage"), where the total amount to be ultimately recoverable shall be uncertain in amount or limit, then the same shall be available as a security or charge for such an amount only of money or stock intended to be thereby secured as the *ad valorem* duty denoted by any stamp or stamps thereon, will extend to cover.

55 Geo. 3, c. 184.

13 & 14 Vict. c. 97.

Mortgage to secure rent-charge or annuity.

Under the same statute also (13 & 14 Vict. c. 97, schedule "Mortgage"), where any deed or instrument as aforesaid shall be made respectively as a security for the payment of any *rent-charge or annuity*, or any sum or sums of money by way of repayment, or in satisfaction and discharge, or in redemption of any sum of money lent, advanced or paid, as, for, or in the nature of a loan intended to be repaid, satisfied, and discharged, or redeemed in manner aforesaid, the same duty is made chargeable as on a mortgage for a sum of money so lent, advanced, or paid.

Transfers of mortgages.

With respect to transfers of mortgages, some considerable perplexity arose where a further advance had been made, and fresh stipulations, provisos or covenants were entered into, as to

whether such an assurance would have been covered by a simple *ad valorem* stamp on the further advance only. The early authorities having supported the doctrine that the *ad valorem* stamp would be sufficient (*Doe dem. Bartley* v. *Gray*, 3 Ad. & El. 39; S. C. 4 Nev. & Man. 719; *Doe* v. *Roe*, 4 Bing. N. C. 737; S. C. *sub nom Doe dem. Barnes* v. *Roe*, 6 Scott, 525); and that a fresh covenant for payment of the original sum, and further advances at a different day from that mentioned in the original mortgage, would not render any further stamp necessary. But after this doctrine had been long acted upon, and a very legion in multitude of transfers of mortgages prepared in accordance with it, the profession were suddenly startled by finding the whole doctrine completely overruled by the decision in *Humberstone* v. *Jones* (16 L. J., N. S. 393), which was followed in some other cases which were determined shortly afterwards (*Rushbrook* v. *Hood*, 10 L. T. 88; *Crawley* v. *Gutteridge*, *ib.* 372), in all of which it was decided, that an *ad valorem* stamp on the further charge was insufficient, whenever the deed contained a new proviso for redemption, a fresh power of sale, or a fresh covenant from the mortgagor for payment of principal and interest. The confusion and inconvenience which the latter decisions occasioned is indescribable; but all these difficulties are at length removed by the new Stamp Act, by the seventh section of which, after reciting that doubts had arisen as to certain stamp duties in Great Britain and Ireland respectively, payable under the said act of the fifty-fifth year of the reign of King George the Third, the said act of the third year of the reign of King George the Fourth, and the several acts respectively therein recited or mentioned, and the said act of the sixth year of the reign of Her present Majesty, or under some or one of

CHAP. XV.

Mortgages, bonds, warrants of attorney, &c.

the said several acts respectively, upon or in respect of certain deeds or instruments hereinafter mentioned, and that it is proper such doubts should be removed, proceeds to enact, "That any transfer, or assignment, disposition, or assignation, already made, or which, on or before the 10th day of October, 1850, may be made, of any mortgage, or wadset, or of any security in the said acts, or any of them mentioned, or of the benefit thereof, or of the money or stock thereby secured, shall not, by reason of its containing any further or additional security for the payment or transfer or re-transfer of such money or stock, or any interest or dividends thereon, or any new covenant, proviso, power, stipulation or agreement, or any other matter whatever in relation to such money or stock, or the interest or dividends thereon, or by reason of its containing all or any of such matters, be or be deemed to be liable to any further or other duty (except progressive duty) than the duty hereinafter mentioned (that is to say), where no further money or stock has been or shall be added to the principal money or stock already secured, a stamp duty of one pound fifteen shillings, and where any further sum of money or stock has been or shall be added to the principal money or stock already secured, the same stamp duty only as on a mortgage or wadset for such further sum or stock; and that any deed or instrument already made, or which may be made as aforesaid, operating or intending to operate as a further charge or as a security for any further or additional money or stock advanced upon any property already comprised in any mortgage or other security, shall not by reason of its containing all or any of the matters aforesaid, in relation to the moneys or stock previously secured, or the interest or dividends thereon be deemed or be liable to any further or other stamp

duty, than the duty chargeable on an original mortgage for the further or additional money or stock, in and by such deed of further charge or security charged or secured or intended so to be."

As to the new duties upon transfers of mortgage.

The duties upon transfers upon mortgages made after the 10th of October, 1850, where no further sum of money or stock shall be added to the principal money or stock already secured, where such principal money shall not exceed in amount or value the sum of 1,400*l.*, the same duty is charged as on a mortgage for the total amount or value of such principal money or stock. And if such principal money or stock shall exceed the sum of 1,400*l.*, then a duty of 1*l.* 15*s.*

Where there is a further advance, duty to be payable in respect of further advance only.

And where any further sum of money or stock shall be added to the principal money or stock already secured, the same duty as on a mortgage or wadset for such further money or stock only, and with a proviso that no such deed or instrument as aforesaid shall in any of the cases be chargeable with any further or other duty than is herein expressly provided (*except progressive duty*), by reason of its containing any further or additional security for the payment or transfer or re-transfer of such money or stocks, or any interest or dividends thereon, or any new covenant, proviso, power, stipulation, or agreement or other matter whatsoever in relation to such money or stock, or the interest or dividends thereon, or by reason of its containing all or any of such matters. And in every other case not before expressly provided for, the transfer is chargeable with a common 35*s.* deed stamp.

As to instruments made for the purpose of further assurance only.

Any deed or instrument made for the *further assurance* only of any estate or property which shall have been already mortgaged, pledged or charged as a security, by any deed or instrument, which shall have paid the *ad valorem* duty on mortgages or bonds chargeable upon any act or

CHAP. XV.

Mortgages, bonds, warrants of attorney, &c.

acts in force at the time of making such last-mentioned deed or instrument. And also any deed or instrument made as an *additional or further security* for any sum or sums of money, or any share or shares of any of the stocks or funds before mentioned, which shall have been already secured by any deed or instrument, which shall have paid the said *ad valorem* duty on mortgages, or bonds chargeable as aforesaid, where the total amount of the value of the money or stock already secured, and in respect whereof the said *ad valorem* duty shall have been paid, shall not exceed the sum of 1,400*l.*, be chargeable with the same duty as on a mortgage or wadset for the amount or value of the said money or stock, and in any other case with a duty of 1*l.* 15*s.*; but with a proviso, that if a further sum of money or stock shall be added to the principal money or stock already secured, such deed or instrument for further assurance or additional or further security, either by the mortgagor, or by any person entitled to the property mortgaged by descent, devise, or bequest from such mortgagor, shall be chargeable only (*exclusive of progressive duty*), with the *ad valorem* duty on mortgages under this act, in respect of such further sum of money or stock in lieu of the duty aforesaid, notwithstanding that the same deed or instrument may also contain any covenant either by the mortgagor or by any person entitled as aforesaid, proviso, power, stipulation, or agreement, or other matter whatever in relation to the money or stock already secured, or the interest or dividends thereon.

Reconveyances of mortgaged premises.

Reconveyances of mortgages, prior to the new Stamp Act, were charged with a common 35*s.* deed stamp, with a progressive duty of 25*s.*; but now, under the recent enactment, such assurance, where the total amount of principal money at any time secured shall not exceed the

Mortgages, bonds, warrants of attorney, &c.

sum of 1,400*l.*, is chargeable with the same duty as on a mortgage for the amount so secured, and in any other case with a duty of 1*l.* 15*s.*

Copyholds.

With respect to copyholds, where any copyholds are mortgaged by means of a conditional surrender or grant, the *ad valorem* duties are chargeable on the surrender or grant, or the memorandum thereof, if made out of court, or on the copy of court roll, if made in court. But where copyholds are charged together with other property for securing one and the same sum of money, the *ad valorem* duty will be chargeable on the deed or instrument relating to the other property (stat. 55 Geo. 3, c. 184, schedule "Mortgage);" consequently, if copyholds are the sole subject-matter of the mortgage, the *ad valorem* stamp should be attached to the memorandum of surrender or copy of court roll, according as the surrender is made in or out of court; but where property of any other tenure is included, then the *ad valorem* stamp should be placed upon the mortgage-deed.

Deeds of covenant.

No express mention is made of deeds of covenant, either for the surrender of copyhold estates, or for any other purposes, by the statute 55 Geo. 3, c. 184; but such assurances were chargeable with the 35*s.* deed stamp under the head of "Conveyance not otherwise provided for." But now, under the new Stamp Act (13 & 14 Vict. c. 97, schedule "Covenant"), any separate deed of covenant made on the sale or mortgage of any freehold, leasehold, copyhold, or customary estate, or of any right or interest therein (the same not being a deed chargeable with *ad valorem* duty under the head of "Conveyance" in the schedule of the said act), for the conveyance, assignment, surrender, or release of such estate, or interest, or for the title to quiet enjoyment, freedom from incumbrances, or further assurance of

CHAP. XIV.

Mortgages, bonds, warrant of attorney, &c.

the same estate, right, title, or interest, or otherwise by way of indemnity in respect of the same, or for the production of the title-deeds or muniments of title relating thereto, or for all or any of the purposes, where the *ad valorem* duty shall not exceed the sum of 10*s.*, is chargeable with a duty equal to the amount of such *ad valorem* duty; and where the same shall exceed that amount, with a duty of 10*s.*

SECTION VI.

SETTLEMENTS.

UNDER the statute 55 Geo. 3, c. 184 (schedule "Settlement"), any deed or instrument, whether voluntary or gratuitous, or upon a good and valuable consideration, other than a *bonâ fide* pecuniary consideration, whereby any definite or certain principal sum or sums of money, (whether charged or chargeable on lands, or other hereditaments or heritable subjects or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not, and if charged and chargeable on lands or other hereditaments or heritable subjects, whether to be raised at all events or not,) or any definite or certain shares in any of the Parliamentary stocks or funds, or in the stock and funds of the Governor and Company of the Bank of England, or of the Bank of Ireland, or of the East India Company, or of the South Sea Company, shall be settled, or agreed to be settled upon or for the benefit of any person or persons, either in possession or reversion, either absolutely or conditionally, or contingently, or for life or other partial interest, or in any other manner whatsoever, are charged with certain *ad valorem* duties set out in the schedule to the said act. These duties have now undergone considerable altera-

Stat. 55 G. 3, c. 184, schedule Settlement.

CHAP. XV. *Settlement.*

tions under the provisions of the new Stamp Act, as will be seen by the Table of Comparative Duties annexed hereto. The new enactment (schedule "Settlement") also declares that all deeds or instruments chargeable with the said *ad valorem* duty, which shall also contain any settlement of lands, or other property, or contain any other matter or thing besides the settlement of such money or stock, shall be chargeable with such further stamp duty as any separate deed or instrument containing such settlement of lands or other property, matter, or thing, would have been chargeable with, exclusive of the progressive duty.

As to marriage articles.

And where there shall be more than one such deed or instrument for effecting such settlement as aforesaid, chargeable with any such duty or duties exceeding 1*l.* 15*s.*, one of them only shall be charged with the said *ad valorem* duty.

And also where any settlement shall be made in pursuance of any previous articles chargeable with and which shall have paid any such duty or duties exceeding 1*l.* 15*s.*, such last-mentioned settlement shall not be chargeable with the said *ad valorem* duty; and the said deeds and instruments, respectively, not chargeable with the said *ad valorem* duty, shall be charged with the duty to which the same may be liable under the more general description in this schedule, or in the said schedule annexed to the said act of the fifty-fifth year of the reign of King George the Third; and on the whole being produced duly executed and duly stamped, as hereby required, the latter shall also be stamped with a particular stamp, for denoting or testifying the payment of the said *ad valorem* duty.

Practical observations.

The harshness of the pre-existing law has long called loudly for, amendment, for until the above enactment, notwithstanding agreements or articles entered into previously to marriage

for the settlement of any property were charged with the same duties as actual settlements, yet if any settlements were afterwards made in pursuance of such articles, the same duties again accrued, and thus became payable twice over; the injustice of which is too manifest to call for any further comment upon the subject.

Where no definite sum is settled, a common deed stamp will be required.

Where no definite and certain principal sums of money are settled, or agreed to be settled, then the assurance will fall within the description of conveyance not otherwise provided for, and require a 35*s.* deed stamp. The progressive duty would, under the old system, have been 25*s.*, but by the new Stamp Act this is now reduced to 10*s.* (See *infra*, Comparative Scale of Progressive Duties.)

Construction of certain terms used in stamp acts.

"In order to avoid the frequent use of divers terms and expressions, and to prevent any misconstruction of the terms and expressions used in this or any other act relating to stamp duties, be it enacted, that wherever in this act or in any other such act as aforesaid, with reference to any person, offence, matter, or thing, any word or words is or are or have been or shall be used importing the singular number or the masculine gender only, yet such words shall be understood to include several persons as well as one person, females as well as males, bodies politic or corporate as well as individuals, and several matters or things as well as one matter or thing, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction; and that wherever the several words, terms, or expressions following are or shall be used in this act or in any other such act as aforesaid, with reference to any deed or instrument, they shall be construed respectively in the manner herein-

after directed, (that is to say,) the word 'write' or the word 'written' shall be respectively deemed to mean and include the several words 'print' or 'printed,' or 'partly write and partly print,' or 'partly written and partly printed,' as well as 'write' or 'written.'" (Sect. 20.)

SECTION VII.

A COMPARATIVE TABLE

OF OLD AND NEW STAMP DUTIES ON CONVEYANCES, LEASES, BONDS, MORTGAGES AND WARRANTS OF ATTORNEY AND SETTLEMENTS.

CONVEYANCES.

OLD SCALE.	Old Duty thereon.	NEW SCALE.	New Duty thereon.
	£ s. d.		£ s. d.
Under 20*l.*	0 10 0	Not exceeding 25*l.*	0 2 6
20*l.* and under 25*l.*	1 0 0		
25 „ 50	1 0 0	Exceeding 25*l.* and not exceeding 50*l.*	0 5 0
50 „ 75	1 10 0	„ 50 „ 75	0 7 6
75 „ 100	1 10 0	„ 75 „ 100	0 10 0
100 „ 125	1 10 0	„ 100 „ 125	0 12 6
125 „ 150	1 10 0	„ 125 „ 150	0 15 0
150 „ 175	2 0 0	„ 150 „ 175	0 17 6
175 „ 200	2 0 0	„ 175 „ 200	1 0 0
200 „ 225	2 0 0	„ 200 „ 225	1 2 6
225 „ 250	2 0 0	„ 225 „ 250	1 5 0
250 „ 275	2 0 0	„ 250 „ 275	1 7 6
275 „ 300	2 0 0	„ 275 „ 300	1 10 0
300 „ 350	3 0 0	„ 300 „ 350	1 15 0
350 „ 400	3 0 0	„ 350 „ 400	2 0 0
400 „ 450	3 0 0	„ 400 „ 450	2 5 0
450 „ 500	3 0 0	„ 450 „ 500	2 10 0
500 „ 550	6 0 0	„ 500 „ 550	2 15 0
550 „ 600	6 0 0	„ 550 „ 600	3 0 0
600 „ 700	6 0 0		
700 „ 800	9 0 0		
800 „ 900	9 0 0		
900 „ 1,000	9 0 0		
Above 1,000*l.*, the old duty is about 1*l.* per cent. up to 100,000*l.*, at which sum the scale stops.		Exceeding 600*l.*, for every hundred, and also for any fractional part of 100*l.*	0 10 0

LEASES IN ENGLAND OR SCOTLAND.

AT A YEARLY RENT.				Old Duty.			New Duty.			
	£		£	£	s.	d.	£	s.	d.	
		Not exceeding ...	5	1	0	0	0	0	6	
Exceeding ...	5	„ ...	10	1	0	0	0	1	0	
„ ...	10	„ ...	15	1	0	0	0	1	6	
„ ...	15	Not amounting to	20	1	0	0	0	2	0	
Amounting to	20	Not exceeding ...	20	1	10	0	0	2	0	
Exceeding ...	20	„ ...	25	1	10	0	0	2	6	
„ ...	25	„ ...	50	1	10	0	0	5	0	
„ ...	50	„ ...	75	1	10	0	0	7	6	
„ ...	75	Not amounting to	100	1	10	0	0	10	0	
Amounting to	100	Not exceeding ...	100	2	0	0	0	10	0	
Exceeding ...	100	„ ...	150	2	0	0				
„ ...	150	Not amounting to	200	2	0	0				
Amounting to	200	Not exceeding ...	200	3	0	0				
Exceeding ...	200	„ ...	250	3	0	0				
„ ...	250	„ ...	300	3	0	0				
„ ...	300	„ ...	350	3	0	0				
„ ...	350	Not amounting to	400	3	0	0				
Amounting to	400	Not exceeding ...	400	4	0	0				
Exceeding ...	400	„ ...	450	4	0	0				
„ ...	450	„ ...	500	4	0	0				
„ ...	500	„ ...	550	4	0	0				5s. for every 50l. and for any fractional part of 50l.
„ ...	550	Not amounting to	600	4	0	0				
Amounting to	600	Not exceeding ...	600	5	0	0				
Exceeding ...	600	„ ...	650	5	0	0				
„ ...	650	„ ...	700	5	0	0				
„ ...	700	„ ...	750	5	0	0				
„ ...	750	Not amounting to	800	5	0	0				
Amounting to	800	Not exceeding ...	800	6	0	0				
Exceeding ...	800	„ ...	850	6	0	0				
„ ...	850	„ ...	900	6	0	0				
„ ...	900	„ ...	950	6	0	0				
„ ...	950	Not amounting to	1,000	6	0	0				
Amounting to	1,000	Not exceeding ...	1,000	10	0	0				
Exceeding ...	1,000	.....	.....	10	0	0				

MEMORIAL FOR REGISTERING ANY DEED OR CONVEYANCE.

	Old Duty.	New Duty.
	£ s. d.	£ s. d.
For every Piece of Vellum, Parchment or Paper	0 10 6	0 2 6

BOND, MORTGAGE, OR WARRANT OF ATTORNEY, FOR SECURING PAYMENT OF A DEFINITE AND CERTAIN SUM OF MONEY.

OLD SCALE.	Old Duty thereon.	NEW SCALE.	New Duty thereon.
	£ s. d.		s. d.
Not exceeding 50*l.*	1 0 0	Not exceeding 50*l.*	1 3
Exceeding 50*l.* not exceeding 100*l.*	1 10 0	Exceeding 50*l.* not exceeding 100*l.*	2 6
„ 100 „ 150	2 0 0	„ 100 „ 150	3 9
„ 150 „ 200	2 0 0	„ 150 „ 200	5 0
„ 200 „ 250	3 0 0	„ 200 „ 250	6 3
„ 250 „ 300	3 0 0	„ 250 „ 300	7 6
„ 300 „ 500	4 0 0		
„ 500 „ 1,000	5 0 0		
„ 1,000 „ 2,000	6 0 0	„ 300 and upwards ...	2*s.* 6*d.* for every 100*l.*, and also for every fractional part of 100*l.*
„ 2,000 „ 3,000	7 0 0		
„ 3,000 „ 4,000	8 0 0		
„ 4,000 „ 5,000	9 0 0		
„ 5,000 „ 10,000	12 0 0		
„ 10,000 „ 15,000	15 0 0		
„ 15,000 „ 20,000	20 0 0		
„ 20,000	25 0 0		

BOND FOR SECURING PAYMENT ON AN ANNUITY.

Per Annum.		Per Annum.	Old Duty.	New Duty.
£		£	£ s. d.	£ s. d.
Not amounting to 10	.....	.....	1 0 0	1 0 0
Amounting to ... 10	Not amounting to	50	2 0 0	1 0 0
„ ... 50	Not exceeding ...	50	3 0 0	1 0 0
Exceeding 50	Not amounting to	100	3 0 0	2 0 0
Amounting to ... 100	Not exceeding ...	100	4 0 0	2 0 0
Exceeding ... 100	Not amounting to	200	4 0 0	2*l.* for every 100*l.* p. annum, and for any fractional part of 100*l.* per annum.
Amounting to ... 200	„ ...	300	5 0 0	
„ ... 300	„ ...	400	6 0 0	
„ ... 400	„ ...	500	7 0 0	
„ ... 500	„ ...	750	9 0 0	
„ ... 750	„ ...	1,000	12 0 0	
„ ... 1,000	„ ...	1,500	15 0 0	
„ ... 1,500	„ ...	2,000	20 0 0	
„ ... 2,000	or upwards ...	.....	25 0 0	

But where there shall be both a personal and heritable bond in *Scotland* in separate deeds of the same date for securing any such annuity or sums payable at stated periods, and the *ad valorem* duty above charged thereon shall amount to 2*l.* or upwards, the heritable bond only shall be charged with the *ad valorem* duty and the personal bond shall be charged only with a duty of 1*l.*

PROGRESSIVE DUTIES.

OLD.		NEW.
Progressive duties on deeds containing 2,160 words, or upwards, for every entire quantity of 1,080 over the first 1,080	1*l.* 5*s.* in certain cases, and 1*l.* in others.	Where the deed is chargeable with *ad valorem* duty not exceeding 10*s.*, a sum equal to the amount of the *ad valorem* duty; in other cases 10*s.*
	£ s. d.	£ s. d.
Charters of resignation, precepts of *clare constat*, seisins, &c. ...	0 9 0	..... 0 5 0
Progressive duty thereon	0 9 0	..... 0 5 0

SETTLEMENT OF ANY SUM OF MONEY OR STOCK.

	£		£	Old Duty. £ s. d.	New Duty.
Not exceeding	100	Not amounting to	1,000	1 13 0	5s. for every 100*l.*, and for any fractional part of 100*l.*
Amounting to	1,000	„	2,000	2 0 0	
„	2,000	„	3,000	3 0 0	
„	3,000	„	4,000	4 0 0	
„	4,000	„	5,000	5 0 0	
„	5,000	„	7,000	7 0 0	
„	7,000	„	9,000	9 0 0	
„	9,000	„	12,000	12 0 0	
„	12,000	„	15,000	15 0 0	
„	15,000	„	20,000	20 0 0	
„	20,000	.....	.....	25 0 0	
And for any Duplicate of the Deed of Settlement ...				The same duty as on the original deed.	

ADDENDA.

SINCE the foregoing sheets have gone through the press, two Acts of Parliament have been passed bearing upon the subject of Sales of Real Property; one relating to defects in the Leases Amendment Act, and the other to amend the Law relating to the Conveyance of Real and Personal Property vested in Mortgagees and Trustees, which are here inserted *verbatim*.

13 VICT. CAP. 17.

An Act to amend an Act of the last Session of Parliament for granting Relief against Defects in Leases made under Powers of Leasing.—[31*st May*, 1850.]

Sect. 1. 12 & 13 *Vict. c.* 26—12 & 13 *Vict. c.* 110—12 & 13 *Vict. c.* 26, *s.* 3, *repealed.*—Whereas an act was passed in the last session of Parliament "for granting Relief against Defects in Leases made under Powers of Leasing in certain Cases;" and by another act of the same session the operation of the said first-recited act was suspended until the first day of June one thousand eight hundred and fifty: and whereas it is expedient that the said first-recited act should be amended: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of the said first-recited act as enacts that the acceptance of rent under any such invalid lease as therein mentioned shall, as against the person accepting the same, be deemed a confirmation of such lease, shall be repealed.

2. *Where there is a note in writing showing intent to confirm, acceptance of rent to be deemed a confirmation.*—And be it enacted, that where, upon or before the acceptance of rent under any such invalid

lease, as in the said first-recited act mentioned, any receipt, memorandum, or note in writing, confirming such lease, is signed by the person accepting such rent, or some other person by him thereunto lawfully authorized, such acceptance shall, as against the person so accepting such rent, be deemed a confirmation of such lease.

3. *Where reversioner is able and willing to confirm, lessee to accept confirmation.*—And be it enacted, that where during the continuance of the possession taken under any such invalid lease as in the said first-recited act mentioned, the person for the time being entitled (subject to such possession as aforesaid) to the hereditaments comprised in such lease, or to the possession or the receipts of the rents and profits thereof, is able to confirm such lease without variation, the lessee, his heirs, executors, or administrators (as the case may require), or any person who would have been bound by the lease if the same had been valid, shall, upon the request of the person so able to confirm the same, be bound to accept a confirmation accordingly; and such confirmation may be by memorandum or note in writing, signed by the persons confirming and accepting respectively, or by some other persons by them respectively thereunto lawfully authorized; and after confirmation and acceptance of confirmation such lease shall be valid, and shall be deemed to have had from the granting thereof the same effect as if the same had been originally valid.

4. *Act may be amended, &c.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this session of Parliament.

13 & 14 VICT. CAP. 60.

An Act to consolidate and amend the Laws relating to the Conveyance and Transfer of Real and Personal Property vested in Mortgagees and Trustees.—[*5th August*, 1850.]

Sect. 1. 11 *Geo.* 4 *&* 1 *Will.* 4, *c.* 60—4 *&* 5 *Will.* 4, *c.* 23—1 *&* 2 *Vict. c.* 69.—Whereas an act was passed in the first year of the reign of His late Majesty King William the Fourth, intituled *An Act for amending the Laws respecting Conveyances and Transfers of Estates and Funds vested in Trustees and Mortgagees, and for enabling Courts of Equity to give Effect to their Decrees and Orders in certain Cases:* and whereas an act was passed in the fifth year of the reign of His late Majesty King William the Fourth, intituled *An Act for the Amendment of the Law relative to the Escheat and Forfeiture of Real and Personal Property holden in trust:* and whereas an act was passed in the second year of the reign of Her present Majesty, intituled *An Act to remove Doubts respecting Conveyances of Estates vested in Heirs and Devisees of Mortgagees:* and whereas it is expedient that the provisions of the said acts should be consolidated and enlarged: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all proceedings under the said acts or any of them commenced before the passing of this act may be proceeded with under the said recited acts, or according to the provisions of this act, as shall be thought expedient, and, subject as aforesaid, that the said recited acts shall be and the same are hereby repealed: provided always, that the several acts repealed by the said recited acts shall not be revived, and that such repeal shall only be on and after this act coming into operation.

2. *Interpretation of terms*—3 *&* 4 *Will.* 4, *c.* 74.—And whereas it is expedient to define the meaning in which certain words are hereafter used; it is declared, that the several words hereinafter named are herein used and applied in the manner following respectively; (that is to say,)

The word "lands" shall extend to and include manors, messuages, tenements, and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein:

The word "stock" shall mean any fund, annuity, or security transferable in books kept by any company or society established or to be established, or transferable by deed alone, or by deed accompanied by other formalities, and any share or interest therein:

The word "seised" shall be applicable to any vested estate for life or of a greater description, and shall extend to estates at law and in equity, in possession or in futurity, in any lands:

The word "possessed" shall be applicable to any vested estate less than a life estate, at law or in equity, in possession or in expectancy, in any lands:

The words "contingent right," as applied to lands, shall mean a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent:

The words "convey" and "conveyance," applied to any person, shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another lands whereof such person is seised or entitled to a contingent right, either for the whole estate of the person conveying or disposing, or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, including the acts to be performed by married women and tenants in tail in accordance with the provisions of an act passed in the fourth year of the reign of His late Majesty King William the Fourth, intituled *An Act for the Abolition of Fines and Recoveries, and the Substitution of more simple Modes of Assurance*, and including also surrenders and other acts which a tenant of customary or copyhold lands can himself perform preparatory to or in aid of a complete assurance of such customary or copyhold lands:

The words "assign" and "assignment" shall mean the execution and performance by a person of every necessary or suitable deed or act for assigning, surrendering, or otherwise transferring lands of which such person is possessed, either for the whole estate of the person so possessed or for any less estate:

The word "transfer" shall mean the execution and performance

of every deed and act by which a person entitled to stock can transfer such stock from himself to another:

The words "Lord Chancellor" shall mean as well the Lord Chancellor of Great Britain as any Lord Keeper or Lords Commissioners of the Great Seal for the time being:

The words "Lord Chancellor of Ireland" shall mean as well the Lord Chancellor of Ireland as any Keeper or Lords Commissioners of the Great Seal of Ireland for the time being:

The word "trust" shall not mean the duties incident to an estate conveyed by way of mortgage; but, with this exception, the words "trust" and "trustee" shall extend to and include implied and constructive trusts, and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of personal representative of a deceased person:

The word "lunatic" shall mean any person who shall have been found to be a lunatic upon a commission of inquiry in the nature of a writ *de lunatico inquirendo:*

The expression "person of unsound mind" shall mean any person, not an infant, who, not having been found to be a lunatic, shall be incapable from infirmity of mind to manage his own affairs:

The word "devisee" shall, in addition to its ordinary signification, mean the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the lands of a deceased person, not as heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent:

The word "mortgage" shall be applicable to every estate, interest, or property in lands or personal estate which would in a court of equity be deemed merely a security for money:

The word "person" used and referred to in the masculine gender shall include a female as well as a male, and shall include a body corporate:

And generally, unless the contrary shall appear from the context, every word importing the singular number only shall extend to several persons or things, and every word importing the plural number shall apply to one person or thing, and every word importing the masculine gender only shall extend to a female.

3. *Lord Chancellor may convey estates of lunatic trustees and mortgagees.*—And be it enacted, that when any lunatic or person of

unsound mind shall be seised or possessed of any lands upon any trust or by way of mortgage, it shall be lawful for the Lord Chancellor, intrusted by virtue of the Queen's sign manual with the care of the persons and estates of lunatics, to make an order that such lands be vested in such person or persons in such manner and for such estate as he shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

4. *Lord Chancellor may convey contingent rights.*—And be it enacted, that when any lunatic or person of unsound mind shall be entitled to any contingent right in any lands upon any trust or by way of mortgage, it shall be lawful for the Lord Chancellor, intrusted as aforesaid, to make an order wholly releasing such lands from such contingent right, or disposing of the same to such person or persons as the said Lord Chancellor shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a deed so releasing or disposing of the contingent right.

5. *Lord Chancellor may transfer stock of lunatic trustees and mortgagees.*—And be it enacted, that when any lunatic or person of unsound mind shall be solely entitled to any stock or to any chose in action upon any trust or by way of mortgage, it shall be lawful for the Lord Chancellor, intrusted as aforesaid, to make an order vesting in any person or persons the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof; and when any person or persons shall be entitled jointly with any lunatic or person of unsound mind to any stock or chose in action upon any trust or by way of mortgage, it shall be lawful for the said Lord Chancellor to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any other person or persons the said Lord Chancellor may appoint.

6. *Power to transfer stock of deceased person.*—And be it enacted, that when any stock shall be standing in the name of any deceased person whose personal representative is a lunatic or person of unsound mind, or when any chose in action shall be vested in any lunatic or person of unsound mind, as the personal representative or a deceased person, it shall be lawful for the Lord Chancellor, intrusted as aforesaid, to make an order vesting the right to transfer such stock, or to

receive the dividends or income thereof, or to sue for and recover such chose in action or any interest in respect thereof, in any person or persons he may appoint.

7. *Court of Chancery may convey estates of infant trustees and mortgagees.*—And be it enacted, that where any infant shall be seised or possessed of any lands upon any trust or by way of mortgage, it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons in such manner and for such estate as the said court shall direct; and the order shall have the same effect as if the infant trustee or mortgagee had been twenty-one years of age, and had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

8. *Contingent rights of infant trustees and mortgagees.*—And be it enacted, that where any infant shall be entitled to any contingent right in any lands upon any trust or by way of mortgage, it shall be lawful for the Court of Chancery to make an order wholly releasing such lands from such contingent right, or disposing of the same to such person or persons as the said court shall direct; and the order shall have the same effect as if the infant had been twenty-one years of age, and had duly executed a deed so releasing or disposing of the contingent right.

9. *Court of Chancery may convey the estate of a trustee out of the jurisdiction of the court.*—And be it enacted, that when any person solely seised or possessed of any lands upon any trust shall be out of the jurisdiction of the Court of Chancery, or cannot be found, it shall be lawful for the said court to make an order vesting such lands in such person or persons in such manner and for such estate as the said court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the lands in the same manner and for the same estate.

10. *Court may make order in cases where persons are seised of lands jointly with parties out of jurisdiction of court, &c.*—And be it enacted, that when any person or persons shall be seised or possessed of any lands jointly with a person out of the jurisdiction of the Court of Chancery, or who cannot be found, it shall be lawful for the said court to make an order vesting the lands in the person or persons so jointly seised or possessed, or in such last-mentioned person or persons together with any other person or persons, in such manner and for such estate as the said court shall direct; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found

had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

11. *Contingent rights of trustees.*—And be it enacted, that when any person solely entitled to a contingent right in any lands upon any trust shall be out of the jurisdiction of the Court of Chancery, or cannot be found, it shall be lawful for the said court to make an order wholly releasing such lands from such contingent right, or disposing of the same to such person or persons as the said court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right.

12. *Court may make order in cases where persons are jointly entitled with others out of the jurisdiction of the court to a contingent right in lands.*—And be it enacted, that when any person jointly entitled with any other person or persons to a contingent right in any lands upon any trust shall be out of the jurisdiction of the Court of Chancery or cannot be found, it shall be lawful for the said court to make an order disposing of the contingent right of the person out of the jurisdiction, or who cannot be found, to the person or persons so jointly entitled as aforesaid, or to such last-mentioned person or persons together with any other person or persons; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right.

13. *When it is uncertain which of several trustees was the survivor.*—And be it enacted, that where there shall have been two or more persons jointly seised or possessed of any lands upon any trust, and it shall be uncertain which of such trustees was the survivor, it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons in such manner and for such estate as the said court shall direct; and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

14. *When it is uncertain whether the last trustee be living or dead.*—And be it enacted, that where any one or more person or persons shall have been seised or possessed of any lands upon any trust, and it shall not be known, as to the trustee last known to have been seised or possessed, whether he be living or dead, it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons in such manner and for such estate as the said court shall

direct; and the order shall have the same effect as if the last trustee had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

15. *When trustee dies without an heir.*—And be it enacted, that when any person seised of any lands upon any trust shall have died intestate as to such lands without an heir, or shall have died and it shall not be known who is his heir or devisee, it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons in such manner and for such estate as the said court shall direct; and the order shall have the same effect as if the heir or devisee of such trustee had duly executed a conveyance of the lands in the same manner for the same estate.

16. *Contingent rights of unborn trustee.*—And be it enacted, that when any lands are subject to a contingent right in an unborn person or class of unborn persons who upon coming into existence would in respect thereof become seised or possessed of such lands upon any trust, it shall be lawful for the Court of Chancery to make an order which shall wholly release and discharge such lands from such contingent right in such unborn person or class of unborn persons, or to make an order which shall vest in any person or persons the estate or estates which such unborn person or class of unborn persons would upon coming into existence be seised or possessed of in such lands.

17. *Power to convey in place of a refusing trustee.*—And be it enacted, that where any person jointly or solely seised or possessed of any lands upon any trust shall, after a demand by a person entitled to require a conveyance or assignment of such lands, or a duly authorized agent of such last-mentioned person, have stated in writing that he will not convey or assign the same, or shall neglect or refuse to convey or assign such lands for the space of twenty-eight days next after a proper deed for conveying or assigning the same shall have been tendered to him by any person entitled to require the same, or by a duly authorized agent of such last-mentioned person, it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons in such manner and for such estate as the said court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the lands in the same manner for the same estates.

18. *Power to convey in place of person entitled to contingent right.*—And be it enacted, that where any person jointly or solely entitled to a contingent right in any lands upon any trust shall, after a demand

for a conveyance or release of such contingent right by a person entitled to require the same, or a duly authorized agent of such last-mentioned person, have stated in writing that he will not convey or release such contingent right, or shall neglect or refuse to convey or release such contingent right for the space of twenty-eight days next after a proper deed for conveying or releasing the same shall have been tendered to him by any person entitled to require the same, or by a duly authorized agent of such last-mentioned person, it shall be lawful for the Court of Chancery to make an order releasing or disposing of such contingent right in such manner as it shall direct; and the order shall have the same effect as if the trustee so neglecting or refusing had duly executed a conveyance so releasing or disposing of the contingent right.

19. *Power to convey in place of mortgagee.*—And be it enacted, that when any person to whom any lands have been conveyed by way of mortgage shall have died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the reconveyance of such lands, then in any of the following cases it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons in such manner and for such estate as the said court shall direct; that is to say,

When an heir or devisee of such mortgagee shall be out of the jurisdiction of the Court of Chancery, or cannot be found:

When an heir or devisee of such mortgagee shall, upon a demand by a person entitled to require a conveyance of such lands or a duly authorized agent of such last-mentioned person, have stated in writing that he will not convey the same, or shall not convey the same for the space of twenty-eight days next after a proper deed for conveying such lands shall have been tendered to him by a person entitled as aforesaid, or a duly authorized agent of such last-mentioned person:

When it shall be uncertain which of several devisees of such mortgagee was the survivor:

When it shall be uncertain as to the survivor of several devisees of such mortgagee, or as to the heir of such mortgagee whether he be living or dead:

When such mortgagee shall have died intestate as to such lands, and without an heir, or shall have died and it shall not be known who is his heir or devisee:

And the order of the said Court of Chancery made in any one of the foregoing cases shall have the same effect as if the heir or devisee or surviving devisee, as the case may be, had duly executed a conveyance or assignment of the lands in the same manner and for the same estate.

20. *Power to appoint a person to convey in certain cases.*—And be it enacted, that in every case where the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, shall, under the provisions of this act, be enabled to make an order having the effect of a conveyance or assignment of any lands, or having the effect of a release or disposition of the contingent right of any person or persons, born or unborn, it shall also be lawful for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, as the case may be, should it be deemed more convenient, to make an order appointing a person to convey or assign such lands, or release or dispose of such contingent right; and the conveyance or assignment, or release or disposition, of the person so appointed, shall, when in conformity with the terms of the order by which he is appointed, have the same effect in conveying or assigning the lands, or releasing or disposing of the contingent right, as an order of the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, would in the particular case have had under the provisions of this act; and in every case where the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, shall, under the provisions of this act, be enabled to make an order vesting in any person or persons the right to transfer any stock transferable in the books of the Governor and Company of the Bank of England, or of any other company or society established or to be established, it shall also be lawful for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, if it be deemed more convenient, to make an order directing the secretary, deputy secretary, or accountant general for the time being of the Governor and Company of the Bank of England, or any officer of such company or society, at once to transfer or join in transferring the stock to the person or persons to be named in the order; and this act shall be a full and complete indemnity and discharge to the Governor and Company of the Bank of England, and all other companies or societies, and their officers or servants, for all acts done or permitted to be done pursuant thereto.

21. *As to lands in Lancaster and Durham.*—And be it enacted, that as to any land situated within the Duchy of Lancaster or the counties palatine of Lancaster or Durham, it shall be lawful for the Court of the Duchy Chamber of Lancaster, the Court of Chancery in

the county palatine of Lancaster, or the Court of Chancery in the county palatine of Durham, to make a like order in the same cases as to any lands within the jurisdiction of the same courts respectively as the Court of Chancery has under the provisions hereinbefore contained been enabled to make concerning any lands; and every such order of the Court of the Duchy Chamber of Lancaster, the Court of Chancery in the county palatine of Lancaster, or the Court of Chancery in the county palatine of Durham, shall, as to such lands, have the same effect as an order of the Court of Chancery: provided always, that no person who is anywhere within the limits of the jurisdiction of the High Court of Chancery shall be deemed by such local courts to be an absent trustee or mortgagee within the meaning of this act.

22. *When trustees of stock out of the jurisdiction.*—And be it enacted, that when any person or persons shall be jointly entitled with any person out of the jurisdiction of the Court of Chancery, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or chose in action upon any trust, it shall be lawful for the said court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for or recover such chose in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any person or persons the said court may appoint; and when any sole trustee of any stock or chose in action shall be out of the jurisdiction of the said court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, in any person or persons the said court may appoint.

23. *When trustee of stock refuses to transfer.*—And be it enacted, that where any sole trustee of any stock or chose in action shall neglect or refuse to transfer such stock, or to receive the dividends or income thereof, or to sue for or recover such chose in action, or any interest in respect thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto, it shall be lawful for the Court of Chancery to make an order vesting the sole right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such

chose in action, or any interest in respect thereof, in such person or persons as the said court may appoint.

24. *When one of several trustees of stock refuses to transfer or receive and pay over dividends.*—And be it enacted, that where any one of the trustees of any stock or chose in action shall neglect or refuse to transfer such stock, or to receive the dividends or income thereof, or to sue for or recover such chose in action according to the directions of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him or her by such person, it shall be lawful for the Court of Chancery to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, in the other trustee or trustees of the said stock or chose in action, or in any person or persons whom the said court may appoint jointly with such other trustee or trustees.

25. *When stock is standing in the name of a deceased person.*—And be it enacted, that when any stock shall be standing in the sole name of a deceased person, and his or her personal representative shall be out of the jurisdiction of the Court of Chancery, or cannot be found, or it shall be uncertain whether such personal representative be living or dead, or such personal representative shall neglect or refuse to transfer such stock, or receive the dividends or income thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid, it shall be lawful for the Court of Chancery to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, in any person or persons whom the said court may appoint.

26. *Effect of an order vesting the legal right to transfer stock.*—And be it enacted, that where any order shall have been made under any of the provisions of this act vesting the right to any stock in any person or persons appointed by the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, such legal right shall vest accordingly, and thereupon the person or persons so appointed are hereby authorized and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock into his or their own name or names or otherwise, or relating to the receipt of the dividends thereof, to the extent and in conformity with the terms of such order; and the Bank of England, and all companies and associations whatever, and all persons, shall be equally bound and compellable to

comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order as the said Bank of England, or such companies, associations, or persons, would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made; and after notice in writing of any such order of the Lord Chancellor, intrusted as aforesaid, or of the Court of Chancery, concerning any stock, shall have been given, it shall not be lawful for the Bank of England, or any company or association whatever, or any person having received such notice, to act upon the requisition of the person in whose place an appointment shall have been made in any matter whatever relating to the transfer of such stock, or the payment of the dividends or produce thereof.

27. *Effect of an order vesting legal right in a chose in action* — And be it enacted, that where any order shall have been made under the provisions of this act, either by the Lord Chancellor, intrusted as aforesaid, or by the Court of Chancery, vesting the legal right to sue for or recover any chose in action or any interest in respect thereof in any person or persons, such legal right shall vest accordingly, and thereupon it shall be lawful for the person or persons so appointed to carry on, commence, and prosecute, in his or their own name or names, any action, suit, or other proceeding at law or in equity for the recovery of such chose in action, in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such chose in action.

28. *Effect of an order vesting copyhold lands, or appointing any person to convey copyhold lands.*—And be it enacted, that whensoever under any of the provisions of this act, an order shall be made, either by the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, vesting any copyhold or customary lands in any person or persons, and such order shall be made with the consent of the lord or lady of the manor whereof such lands are holden, then the lands shall, without any surrender or admittance in respect thereof, vest accordingly; and whenever, under any of the provisions of this act, an order shall be made either by the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, appointing any person or persons to convey or assign any copyhold or customary lands, it shall be lawful for such person or per-

sons to do all acts and execute all instruments for the purpose of completing the assurance of such lands: and all such acts and instruments so done and executed shall have the same effect, and every lord and lady of a manor, and every other person, shall, subject to the customs of the manor and the usual payments, be equally bound and compellable to make admittance to such lands, and to do all other acts for the purpose of completing the assurance thereof, as if the persons in whose place an appointment shall have been made, being free from any disability, had duly done and executed such acts and instruments.

29. *When a decree is made for sale of real estate for payment of debts.*—And be it enacted, that when a decree shall have been made by any court of equity directing the sale of any lands for the payment of the debts of a deceased person, every person seised or possessed of such lands, or entitled to a contingent right therein, as heir, or under the will of such deceased debtor, shall be deemed to be so seised or possessed or entitled, as the case may be, upon a trust within the meaning of this act; and the Court of Chancery is hereby empowered to make an order wholly discharging the contingent right, under the will of such deceased debtor, of any unborn person.

30. *Court to declare what parties are trustees of lands comprised in any suit, and as to the interests of persons unborn.*—And be it enacted, that where any decree shall be made by any court of equity for the specific performance of a contract concerning any lands, or for the partition or exchange of any lands, or generally when any decree shall be made for the conveyance or assignment of any lands, either in cases arising out of the doctrine of election or otherwise, it shall be lawful for the said court to declare that any of the parties to the said suit wherein such decree is made are trustees of such lands or any part thereof, within the meaning of this act, or to declare concerning the interests of unborn persons who might claim under any party to the said suit, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this act, and thereupon it shall be lawful for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, as the case may be, to make such order or orders as to the estates, rights, and interests of such persons, born or unborn, as the said court or the said Lord Chancellor might under the provi-

sions of this act make concerning the estates, rights, and interests of trustees born or unborn.

31. *Power to make directions how the right to transfer stock to be exercised.*—And be it enacted, that it shall be lawful for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, to make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this act shall be exercised; and thereupon the person or persons in whom such right shall be vested shall be compellable to obey such directions and declarations by the same process as that by which other orders under this act are enforced.

32. *Power to court to make order appointing new trustees.*—And be it enacted, that whenever it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the Court of Chancery, it shall be lawful for the said Court of Chancery to make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees.

33. *The new trustees to have the powers of trustees appointed by decree in suit.*—And be it enacted, that the person or persons who, upon the making of such order as last aforesaid, shall be trustee or trustees, shall have all the same rights and powers as he or they would have had if appointed by decree in a suit duly instituted.

34. *Power to court to vest lands in new trustees.*—And be it enacted, that it shall be lawful for the said Court of Chancery, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to direct that any lands subject to the trust shall vest in the person or persons who upon the appointment shall be the trustee or trustees, for such estate as the court shall direct; and such order shall have the same effect as if the person or persons who before such order were the trustee or trustees (if any) had duly executed all proper conveyances and assignments of such lands for such estate.

35. *Power to court to vest right to sue at law in new trustees.*—And be it enacted, that it shall be lawful for the said Court of Chancery, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to vest the right to call for a transfer of any stock subject to the trust, or to receive the dividends or income thereof, or to sue for or recover any chose in action, subject to the trust, or any interest in respect thereof, in the

person or persons who upon the appointment shall be the trustee or trustees.

36. *Old trustees not to be discharged from liability.*—And be it enacted, that any such appointment by the court of new trustees, and any such conveyance, assignment, or transfer as aforesaid, shall operate no further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have done.

37. *Who may apply.*—And be it enacted, that an order, under any of the hereinbefore contained provisions, for the appointment of a new trustee or trustees, or concerning any lands, stock, or chose in action subject to a trust, may be made upon the application of any person beneficially interested in such lands, stock, or chose in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof; and that an order under any of the provisions hereinbefore contained concerning any lands, stock, or chose in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the moneys secured by such mortgage.

38. *Power to go before the Master in the first instance.*—And be it enacted, that when any person shall deem himself entitled to an order under any of the provisions hereinbefore contained, either from the Lord Chancellor, intrusted as aforesaid, or from the Court of Chancery, it shall be lawful for him to exhibit before any one of the Masters of the High Court of Chancery a statement of the facts whereon such order is sought to be obtained, and adduce evidence in support thereof; and if such evidence shall be satisfactory to the said Master, he shall, at the request of the person adducing such evidence, give a certificate under his hand of the several material facts found by him to be true, and of his opinion that such person is entitled to an order in the form set forth in such certificate.

39. *Power to petition the court or the Lord Chancellor.*—And be it enacted, that any person who shall have obtained such certificate may apply by motion to the Court of Chancery, or to the Lord Chancellor, intrusted as aforesaid, for an order to the effect set forth in such certificate, or for such other order as such person may deem himself entitled to upon the facts found by the Master.

40. *Power to present petition in the first instance.*—And be it enacted, that any person or persons entitled in manner aforesaid to

apply for an order from the said Court of Chancery, or from the Lord Chancellor, intrusted as aforesaid, may, should he so think fit, present a petition in the first instance to the Court of Chancery, or to the Lord Chancellor, intrusted as aforesaid, for such order as he may deem himself entitled to, and may give evidence by affidavit or otherwise in support of such petition before the said court, or the Lord Chancellor, intrusted as aforesaid, and may serve such person or persons with notice of such petition as he may deem entitled to service thereof.

41. *What may be done upon petition.*—And be it enacted, that upon the hearing of any such motion or petition it shall be lawful for the said court or for the said Lord Chancellor, should it be deemed necessary, to direct a reference to one of the Masters in ordinary of the Court of Chancery to inquire into any facts which require such an investigation, or it shall be lawful for the said court or for the said Lord Chancellor to direct such motion or petition to stand over, to enable the petitioner or petitioners to adduce evidence or further evidence before the said court, or before the said Lord Chancellor, or to enable notice or any further notice of such motion or petition to be served upon any person or persons.

42. *Court may dismiss petition with or without costs.*—And be it enacted, that upon the hearing of any such motion or petition, whether any certificate or report from a Master shall have been obtained or not, it shall be lawful for the court, or the Lord Chancellor, intrusted as aforesaid, to dismiss such motion or petition, with or without costs, or to make an order thereupon in conformity with the provisions of this act.

43. *Power to make an order in a cause.*—And be it enacted, that whensoever in any cause or matter, either by the evidence adduced therein, or by the admissions of the parties, or by a report of one of the Masters of the Court of Chancery, the facts necessary for an order under this act shall appear to such court to be sufficiently proved, it shall be lawful for the said court, either upon the hearing of the said cause or of any petition or motion in the said cause or matter, to make such order under this act.

44. *Orders made by the Court of Chancery, founded on certain allegations, to be conclusive evidence of the matter contained in such allegations.*—And be it enacted, that whenever any order shall be made, under this act, either by the Lord Chancellor, intrusted as aforesaid, or by the Court of Chancery, for the purpose of conveying or assigning any lands, or for the purpose of releasing or disposing of any contingent

right, and such order shall be founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or devisee of a mortgagee is out of the jurisdiction of the Court of Chancery or cannot be found, or that it is uncertain which of several trustees, or which of several devisees of a mortgagee was the survivor, or whether the last trustee, or the heir or last surviving devisee of a mortgagee be living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died and it is not known who is his heir or devisee, then in any of such cases the fact that the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, has made an order upon such an allegation, shall be conclusive evidence of the matter so alleged in any court of law or equity upon any question as to the legal validity of the order: provided always, that nothing herein contained shall prevent the Court of Chancery directing a re-conveyance or re-assignment of any lands conveyed or assigned by any order under this act, or a re-disposition of any contingent right conveyed or disposed of by such order; and it shall be lawful for the said court to direct any of the parties to any suit concerning such lands or contingent right to pay any costs occasioned by the order under this act, when the same shall appear to have been improperly obtained.

45. *Trustees of charities.*—And be it enacted, that it shall be lawful for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, to exercise the powers herein conferred for the purpose of vesting any lands, stock, or chose in action in the trustee or trustees of any charity or society over which charity or society the said Court of Chancery would have jurisdiction upon suit duly instituted, whether such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the said Court of Chancery, or by order made upon a petition to the said court under any statute authorizing the said court to make an order to that effect in a summary way upon petition.

46. *No escheat of property held upon trust or mortgage.*—And be it enacted, that no lands, stock, or chose in action vested in any person upon any trust or by way of mortgage, or any profits thereof, shall escheat or be forfeited to Her Majesty, her heirs or successors, or to any corporation, lord or lady of a manor, or other person, by reason of the attainder or conviction for any offence of such trustee or mortgagee, but shall remain in such trustee or mortgagee, or survive to his or her co-trustee, or descend or vest in his or her representative, as if no such attainder or conviction had taken place.

47. *Act not to prevent escheat or forfeiture of beneficial interest.*—And be it enacted, that nothing contained in this act shall prevent the escheat or forfeiture of any lands or personal estate vested in any such trustee or mortgagee, so far as relates to any beneficial interest therein of any such trustee or mortgagee, but such lands or personal estate, so far as relates to any such beneficial interests, shall be recoverable in the same manner as if this act had not passed.

48. *Money of infants and persons of unsound mind to be paid into court.*—And be it enacted, that where any infant or person of unsound mind shall be entitled to any money payable in discharge of any lands, stock, or chose in action conveyed, assigned, or transferred under this act, it shall be lawful for the person by whom such money is payable to pay the same into the Bank of England, in the name and with the privity of the Accountant General, in trust in any cause then depending concerning such money, or, if there shall be no such cause, to the credit of such infant or person of unsound mind, subject to the order or disposition of the said court; and it shall be lawful for the said court, upon petition in a summary way, to order any money so paid to be invested in the public funds, and to order payment or distribution thereof, or payment of the dividends thereof, as to the said Court shall seem reasonable; and every cashier of the Bank of England who shall receive any such money is hereby required to give to the person paying the same a receipt for such money, and such receipt shall be an effectual discharge for the money therein respectively expressed to have been received.

49. *Court may make a decree in the absence of a trustee.*—And be it enacted, that where in any suit commenced or to be commenced in the Court of Chancery it shall be made to appear to the court by affidavit that diligent search and inquiry has been made after any person made a defendant, who is only a trustee, to serve him with the process of the court, and that he cannot be found, it shall be lawful for the said court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to them to be only a trustee, and not otherwise concerned in interest in the matter in question, in such and the same manner as if such trustee had been duly served with the process of the court, and had appeared and filed his answer thereto, and had also appeared by his counsel and solicitor at the hearing of such cause: provided always, that no such decree shall bind, affect, or in anywise prejudice any person against whom the same shall be made, without service of process upon him as aforesaid, his

heirs, executors, or administrators, for or in respect of any estate, right, or interest which such person shall have at the time of making such decree for his own use or benefit, or otherwise than as a trustee as aforesaid.

50. *Powers of the Master.*—And be it enacted, that when any person shall, under the provisions of this act, apply to one of the Masters of the Court of Chancery in the first instance, and adduce evidence, for the purpose of obtaining the certificate of such Master as a foundation for an order of the said Lord Chancellor, intrusted as aforesaid, or the said Court of Chancery, it shall be lawful for the said Master to order service of such application upon any person, or to dismiss such application, and to direct that the costs of any persons consequent thereon shall be paid by the person making the same; and all orders of the Master under this act shall be enforced by the same process as orders of the court made in any suit against a party thereto.

51. *Costs may be paid out of the estate.*—And be it enacted, that the Lord Chancellor, intrusted as aforesaid, and the Court of Chancery, may order the costs and expenses of and relating to the petitions, orders, directions, conveyances, assignments, and transfers to be made in pursuance of this act, or any of them, to be paid and raised out of or from the lands or personal estate, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Lord Chancellor or court shall think proper.

52. *Commission concerning person of unsound mind.*—And be it enacted, that upon any petition being presented under this act to the Lord Chancellor, intrusted as aforesaid, concerning a person of unsound mind, it shall be lawful for the said Lord Chancellor, should he so think fit, to direct that a commission in the nature of a writ *de lunatico inquirendo* shall issue concerning such person, and to postpone making any order upon such petition until a return shall have been made to such commission.

53. *Suit may be directed.*—And be it enacted, that upon any petition under this act being presented to the Lord Chancellor, intrusted as aforesaid, or to the Court of Chancery, it shall be lawful for the said Lord Chancellor or the said Court of Chancery to postpone making any order upon such petition until the right of the petitioner or petitioners shall have been declared in a suit duly instituted for that purpose.

54. *Powers of Court of Chancery to extend to property in the colonies.*—And be it enacted, that the powers and authorities given by this act

to the Court of Chancery in England shall extend to all lands and personal estate within the dominions, plantations, and colonies belonging to Her Majesty (except Scotland.)

55. *Powers given to Court of Chancery may be exercised by that court in Ireland.*—And be it enacted, that the powers and authorities given by this act to the Court of Chancery in England shall and may be exercised in like manner and are hereby given and extended to the Court of Chancery in Ireland with respect to all lands and personal estate in Ireland.

56. *Powers of Lord Chancellor in lunacy to extend to property in the colonies.*—And be it enacted, that the powers and authorities given by this act to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall extend to all lands and personal estate within any of the dominions, plantations, and colonies belonging to Her Majesty (except Scotland and Ireland.)

57. *Powers of Lord Chancellor in lunacy may be exercised by Lord Chancellor of Ireland.*—And be it enacted, that the powers and authorities given by this act to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall and may be exercised in like manner by and are hereby given to the Lord Chancellor of Ireland, intrusted as aforesaid, with respect to all lands and personal estate in Ireland.

58. *Short title.*—And be it enacted, that in citing this act in other acts of Parliament, and in legal instruments and in legal proceedings, it shall be sufficient to use the expression "The Trustee Act, 1850."

59. *Commencement of act.*—And be it enacted, that this act shall come into operation on the first day of November one thousand eight hundred and fifty.

60. *Act may be amended, &c.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this session of Parliament.

APPENDIX,

&c. &c.

APPENDIX.

PRECEDENTS OF FORMS OF PURCHASE-DEEDS.

No. I.

Conveyance by appointment, grant and release to uses to bar dower.

1. Parties.
2. Recital of conveyance to vendor.
3. Of contract to purchase.
4. Testatum by which vendor appoints.
5. Further testatum by which vendor grants and releases.
6. Habendum to dower uses.
7. Declaration to debar purchaser's widow from dower.
8. Covenants from vendor, for title.
9. For quiet enjoyment.
10. Freedom from incumbrances.
11. For further assurance.

Stamp in lieu of lease for year, 1*l.* 15*s.* *Ad valorem stamp,* 25*l.*

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*vendor*), of, &c., of the first part (*purchaser*), of, &c., of the second part, and (*purchaser's dower trustee*), of the third part. Parties.

2. WHEREAS by indentures of lease and release, bearing date respectively on or about the 22nd and 23rd days of March, in the year 1830, the indenture of release being made between A. B., Esq., of the first part, C. D., gentleman, of the second part, the said (*vendor*), of the third part, and (*vendor's trustee*), of the fourth part, the hereditaments and premises hereinafter described, and which are intended to be hereby appointed granted and released, were conveyed, and now stand limited to such uses, upon such trusts, and for such ends, intents and purposes, as the said (*vendor*) shall by deed or deeds appoint; and in default of, and until such appointment, *to the use of* the said (*vendor*) and Recital of conveyance to vendor to dower uses.

his assigns, for life, without impeachment of waste, with a limitation *to the use* of the said (*vendor's trustee*), his executors and administrators, during the life of, and in trust for, the said (*vendor*), and his assigns, with the ultimate limitation *to the use* of the said (*vendor*), his heirs and assigns, for ever:

Of contract to purchase.

3. AND WHEREAS the said (*vendor*) has contracted to sell the said hereditaments and premises and the inheritance thereof, in possession, in fee-simple, free from incumbrances, to the said (*purchaser*), for the sum of 2,990*l.*:

Testatum by which vendor appoints.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of 2,990*l.* sterling paid by the said (*purchaser*) to the said (*vendor*), on the execution thereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth by these presents release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, he, the said (*vendor*), in exercise of the power given him by the said hereinbefore recited indenture of release, DOTH, by this present deed, appoint that all and singular the hereditaments and premises hereinafter described, and which are also intended to be hereby granted and released, with their appurtenances, shall from henceforth be to the uses, upon the trusts, and for the ends, intents and purposes hereinafter limited, expressed and declared.

Further testatum by which vendor grants and releases.

5. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said contract, and for the considerations aforesaid, the said (*vendor*) DOTH, by these presents, grant, release and confirm unto the said (*purchaser*) and his heirs, ALL (*here describe the parcels*), TOGETHER with all and singular houses, (*a*) out-houses, edifices, buildings, barns, stables, yards, gardens, orchards, ways, paths, passages, waters, water-courses, sewers, drains, timber and other trees, woods, underwoods, and the ground and soil thereof; commons, common of pasture and of turbary, and all other commonable rights whatsoever; hedges, ditches, fences, mounds, bounds, liberties, lights, easements, profits, privileges, commodities, advantages,

(*a*) The general words are given fully, in order that such of them may be selected as may be best adapted to the particular circumstances of each individual conveyance.

rights, members and appurtenances to the said hereditaments and premises belonging, or usually held, occupied or enjoyed therewith, and all the estate, right, title and interest, both legal and equitable, of him the said (*vendor*) therein; and also all deeds, evidences and writings relating to the title thereof, in the possession of the said (*vendor*), or which he can obtain without suit.

Habendum to dower uses.

6. TO HAVE AND TO HOLD the said , and all and singular other the hereditaments and premises hereinbefore described and hereby granted and released, with their appurtenances, unto the said (*purchaser*) and his heirs, to the uses, upon the trusts, and for the ends, intents and purposes hereinafter declared; that is to say, TO SUCH USES, upon such trusts, and for such ends, intents and purposes as the said (*purchaser*) shall from time to time, or at any time, by deed or deeds, appoint; and in default of, and until such appointment, and subject thereto, TO THE USE of the said (*purchaser*) and his assigns, during the term of his natural life, without impeachment of waste; and after the determination of that estate, by any means, in his lifetime, TO THE USE of the said (*dower trustee*), his executors and administrators, during the life of, and IN TRUST for, the said (*purchaser*) and his assigns; and after the determination of the said hereinbefore lastly limited estate, TO THE USE of the said (*purchaser*), his heirs and assigns, for ever.

Declaration to debar widow of dower.

7. AND it is hereby declared, that no widow of the said (*purchaser*), shall be entitled to dower out of the said hereditaments and premises.

Qualified covenants from vendor that he has good right to convey.

8. AND the said (*vendor*) doth hereby, for himself, his heirs, executors, and administrators, covenant with the said (*purchaser*) his heirs and assigns, that (notwithstanding any act or thing done or permitted by the said (*vendor*) to the contrary) the said (*vendor*) now hath in himself good right, full power, and absolute authority to grant and release the said hereditaments and premises to the uses and in manner aforesaid, according to the true intent and meaning of these presents.

For quiet enjoyment.

9. AND ALSO that (notwithstanding any such act or thing as aforesaid), the said hereditaments and premises shall or may from time to time, and at all times, be peaceably and quietly held and enjoyed according to

the uses hereinbefore declared, concerning the same, without let, suit, eviction, ejection, interruption, molestation or disturbance from or by the said (*vendor*), or any other person or persons whomsoever, rightfully claiming under or in trust for him, or by or through his acts, deeds, defaults, privity or procurement.

Freedom from incumbrances.

10. And that freely, clearly, and absolutely indemnified by the said (*vendor*) his heirs, executors, or administrators, of, from, and against all former and other estates, rights, titles, liens, charges, and incumbrances whatsoever, made, created, occasioned, or suffered by the said (*vendor*), or any other person or persons whomsoever, rightfully claiming under or in trust for him, or by or through his acts, deeds, defaults, privity, or procurement.

For further assurance.

11. And moreover, that the said (*vendor*), and all persons rightfully claiming any estate or interest, legal or equitable, in the said hereditaments and premises, or any part thereof, under or in trust for him, will, from time to time, and at all times hereafter, at the request and costs of the said (*purchaser*), his appointees, heirs or assigns, make, do, acknowledge, enter into, execute and perfect, or cause or procure to be made, done, acknowledged, entered into, executed and perfected, all such further acts, deeds, conveyances and assurances whatsoever, for the further, better, more perfectly or satisfactorily appointing, granting, releasing and confirming, or otherwise assuring the said hereditaments and premises, and every or any part of the same, with their appurtenances, to the uses and in manner aforesaid, according to the true intent and meaning of these presents, as the said (*purchaser*), his appointees, heirs or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed. In witness whereof the said parties to these presents their hands and seals have set the day and year first above written.

No. II.

Appointment to a purchaser to dower uses, with usual covenants and title.

1. Parties.
2. Testatum, vendor appoints.
3. Declaration of dower uses.
4. Covenants from vendor for title, that power is still subsisting.
5. That vendor has good right to appoint.
6. For quiet enjoyment and freedom from incumbrances.
7. For further assurance.

No lease for year stamp will be required. Ad valorem stamp, 25l.

Parties. 1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*vendor*), of, &c., of the first part (*purchaser*), of, &c. of the second part, and (*dower trustee*), of, &c., of the third part. [RECITE HERE, *the conveyance to uses to bar dower as in last precedent, clause* 2. RECITE ALSO, *contract to purchase, ut. ib. clause* 3.]

Testatum, vendor appoints. 2. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of 2,990*l.* sterling, paid by the said (*purchaser*) to the said (*vendor*) on the execution hereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth by these presents release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, the said (*vendor*) in exercise of the power limited and reserved to him by the said hereinbefore-recited indenture of release, and of every power in anywise enabling him in this behalf, DOTH by this present deed absolutely and irrevocably appoint that ALL [HERE INSERT *the parcels, omitting the all-estate clause and also the all-deeds clause*], with all and singular their rights, members, and appurtenances, shall from henceforth be,

Declaration of dower uses. 3. TO SUCH USES, upon such trusts, and for such ends, intents and purposes, as the said (*purchaser*) shall from time to time, or at any time, by any deed or deeds, appoint; and in default of, and until such appointment, and in the meantime subject thereto, TO THE USE of the said (*purchaser*) and his assigns for the term of his natural life, without impeachment

of waste; and after the determination of that estate by any means in his lifetime, TO THE USE of the said (*dower trustee*), his executors and administrators, during the life of the said (*purchaser*) IN TRUST for him and his assigns; and after the determination of the said hereinbefore lastly-limited estate, TO THE USE of the said (*purchaser*), his heirs and assigns for ever. [HERE INSERT *declaration to bar dower, as in last precedent, clauses* 6, 7.]

Qualified covenants from vendor, that the power is still subsisting.

4. AND the said (*vendor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that notwithstanding any act or thing done or permitted by the said (*vendor*) to the contrary, the said recited power is at the time of the execution of these presents a valid and subsisting power.

That vendor has good right to appoint.

5. AND ALSO that notwithstanding any such act or thing as aforesaid, the said (*vendor*) now hath in himself good right, and lawful and absolute power and authority by these presents, to appoint the said hereditaments and premises, hereby appointed, with their appurtenances, to the uses and in manner aforesaid.

For quiet enjoyment and freedom from incumbrances.

6. AND FURTHER, that, notwithstanding any such act or thing as aforesaid, the said hereditaments and premises shall from henceforth be to the uses hereinbefore declared concerning the same, and be peaceably and quietly held and enjoyed accordingly, without let, suit, eviction, ejection, interruption, disturbance or denial, of or by the said (*vendor*), or any other person or persons whomsoever rightfully claiming under or in trust for him; and that freely, clearly, and absolutely indemnified by the said (*vendor*), his heirs, executors, or administrators, of, from and against all former estates, rights, titles, liens, charges and incumbrances whatsoever made, created or suffered by the said (*vendor*), or any person or persons whomsoever rightfully claiming under or in trust for him.

For further assurance.

7. AND MOREOVER, that the said (*vendor*), and all persons rightfully claiming any estate or interest, legal or equitable, in the said hereditaments and premises under or in trust for him, will, from time to time, and at all times hereafter, at the request and costs of the said (*purchaser*), his appointees, heirs or assigns, enter into, execute, and perfect all such further and other lawful and reasonable acts, deeds,

appointments, conveyances and assurances whatsoever, for the further, better, or more satisfactorily appointing, assuring and confirming the said hereditaments and premises to the uses aforesaid, according to the true intent and meaning of these presents, as the said (*purchaser*), his appointees, heirs or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed. IN WITNESS, &c.

No. III.

Conveyance by grant and release to a purchaser in fee, with the usual covenants for title.

1. Parties.
2. Testatum by which vendor grants and releases.
3. Habendum to purchaser in fee.
4. Declaration to debar widow of dower.
5. Covenant from vendor that he has good right to convey.
6. For quiet enjoyment, and freedom from incumbrances.
7. For further assurance.

Lease for year stamp, 1*l.* *Ad valorem stamp*, 1*l.* 10*s.*

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*vendor*), of, &c., of the one part, and (*purchaser*) of the other part.

Testatum by which vendor grants and releases.

2. WITNESSETH that in consideration of 149*l.* sterling, this day paid by the said (*purchaser*) to the said (*vendor*), the receipt of which the said (*vendor*) hereby acknowledges, HE, the said (*vendor*) DOTH by these presents grant and release unto the said (*purchaser*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels*], AND all rights, members and appurtenances to the said premises belonging. AND all the estate and interest, both legal and equitable, of him the said (*vendor*) therein, AND all deeds and writings relating to the title thereof, in the custody of the said (*vendor*), or which he can procure without suit.

Habendum to purchaser in fee.

3. TO HAVE AND TO HOLD the said [INSERT *short general description*], and all and singular other the premises hereinbefore described, and hereby granted and released, with the appurtenances, unto and to the use of the said (*purchaser*), his heirs and assigns for ever.

Declaration to debar widow of dower.

4. AND it is hereby declared that no widow of the said (*purchaser*) shall be entitled to dower out of the said hereditaments and premises.

Covenant from vendor that he has good right to convey.

5. AND the said (*vendor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act done or permitted by the said (*vendor*) or any of his ancestors or testators to the contrary) the said (*vendor*) now hath good right to

convey the said hereditaments and premises, hereby granted and released, with their appurtenances, unto and to the use of the said (*purchaser*), his heirs and assigns, in manner aforesaid.

For quiet enjoyment and freedom from incumbrances.

6. And also, that the same hereditaments and premises shall be held and enjoyed accordingly without let, suit, eviction or disturbance by the said (*vendor*), or any other person whomsoever, rightfully claiming under him or any of his ancestors or testators; And that freely, clearly, and absolutely exonerated by the said (*vendor*), his heirs, executors or administrators, from all estates, rights, titles, liens, charges or incumbrances whatsoever made or created by the said (*vendor*), or any of his ancestors or testators, or any other person or persons whomsoever rightfully claiming under him or them, or by or through their acts, deeds, defaults, privity or procurement.

For further assurance.

7. And moreover, that the said (*vendor*), and all persons rightfully claiming any estate or interest, legal or equitable, in the said hereditaments, and premises under or in trust for him or any of his ancestors or testators, shall and will from time to time, and at all times, at the request and costs of the said (*purchaser*), his heirs or assigns, enter into and execute all such further assurances for the more perfectly or satisfactorily assuring or confirming the said hereditaments and premises, unto and to the use of the said (*purchaser*), his heirs and assigns, as the said (*purchaser*), his heirs and assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed.

In witness, &c.

No. IV.

Conveyance by a vendor (mortgagor), and his mortgagee, to a purchaser; the former conveying the fee, and the latter surrendering a term of years vested in him under the mortgage-deed.

1. Parties.
2. Recital of mortgage by demise.
3. That principal is still due, but that all interest has been paid.
4. Of contract to purchase.
5. Testatum.
6. Habendum to purchaser in fee.
7. Covenant from mortgagee that he has done no act to incumber.

Stamp in lieu of lease for year, 1*l.* 15*s.* *Ad valorem stamp*, 35*l.*

Parties.

1. THIS INDENTURE, made the day of , 185 , BETWEEN (*vendor*), of, &c., of the first part; (*mortgagee*), of, &c., of the second part; (*purchaser*), of, &c., of the third part; and (*dower trustee*), of, &c., of the fourth part.

Recital of mortgage by demise.

2. WHEREAS by indenture of demise bearing date on or about the day of , in the year 1839, and made between the said (*vendor*), of the one part, and the said (*mortgagee*), of the other part, the said (*vendor*) did grant and demise unto the said (*mortgagee*) the hereditaments and premises hereinafter described, and intended to be hereby granted and released, TO HOLD the same, with the appurtenances, unto the said (*mortgagee*), his executors, administrators, and assigns, from thenceforth, for the term of 1,000 years, subject to a proviso for making void the said term on payment by the said (*vendor*), his heirs, executors or administrators to the said (*mortgagee*), his executors, administrators or assigns, of the sum of 2,000*l.*, with interest for the same, at the rate of 4*l.* for every 100*l.* by the year, at the time and in manner therein mentioned, but in payment whereof default was made.

That principal is still due, but that all interest has been paid.

3. AND WHEREAS the said principal sum of 2,000*l.* is still owing to the said (*mortgagee*) upon his said hereinbefore-recited mortgage security, but all interest for the same has been duly paid up to the day of the date of these presents, as the said (*mortgagee*) doth hereby acknowledge.

4. And whereas the said (*purchaser*) has contracted with the said (*vendor*) for the absolute purchase of the hereditaments and premises comprised in the said hereinbefore recited indenture of mortgage, and the fee-simple and inheritance thereof, free from incumbrances, for the price of 3,000*l.*, out of which it has been agreed that the sum of 2,000*l.* shall be applied in liquidation of the said mortgage debt. Of contract to purchase.

5. Now this Indenture witnesseth, that in pursuance of the said agreement, and in consideration of the sum of 2,000*l.* sterling, paid by the said (*purchaser*) to the said (*mortgagee*) (at the request and by the direction of the said (*vendor*), testified by his being a party to, and executing these presents) on the execution hereof, the receipt of which said sum of 2,000*l.*, and that the same is in full satisfaction and discharge of all moneys due to him in respect of the said recited mortgage security, the said (*mortgagee*) doth hereby acknowledge, and therefrom doth by these presents release and for ever discharge the said (*vendor*), his heirs, executors and administrators, and also the said (*purchaser*), his heirs, executors, administrators and assigns, and also in consideration of the further sum of 1,000*l.* sterling, at the same time as aforesaid paid by the said (*purchaser*) to the said (*vendor*), the receipt of which said sum of 1,000*l.*, and payment of the said sum of 2,000*l.* in manner aforesaid, making together the said sum of 3,000*l.*, the purchase-money of the said hereditaments and premises, the said (*vendor*) hereby acknowledges, and therefrom doth by these presents release and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns; he the said (*mortgagee*), in order to merge and extinguish the said term of 1,000 years in the reversion and inheritance of the same hereditaments and premises (at the request and by the direction of the said (*vendor*) testified as aforesaid), doth by these presents assign, surrender and yield up, and the said (*vendor*) doth by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, all, &c. [Here describe *the parcels* and insert *general words, ut ante*, No. I., clause 5, p. ii]; and all the estate, right, title and interest, both legal and equitable, of them the said (*mortgagee*) and (*vendor*) therein; and also all deeds, evidences, and Testatum.

writings relating to the title of the said premises in the possession of the said (*mortgagee*) and (*vendor*), or either of them, or which the said (*vendor*) can obtain without suit.

Habendum to purchaser in fee.

6. To have and to hold the said and all and singular other the premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*purchaser*) and his heirs, to the use of the said (*purchaser*), his heirs and assigns for ever. (*a*) [Here insert *declaration to bar dower, ut ante,* No. I., *clause* 7, p. iii.]

Covenant from mortgagee that he has done no act to incumber.

7. And the said (*mortgagee*) doth hereby for himself, his executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that he the said (*mortgagee*) hath not at any time heretofore done, or committed, or knowingly suffered any act, deed, matter or thing whatsoever, whereby, or by reason or means whereof, the said hereditaments and premises hereby granted and released, and also surrendered, or any part thereof, can be incumbered. [Here insert *covenants for title by vendor, ut ante,* No. I., *clauses* 8, 9, 10, 11, pp. iii. iv.]

In witness, &c.

(*a*) If it is intended that the property should be limited to uses to bar dower, substitute for the above clause, the Habendum clause, No. I., clause 6, *ante*, p. iii.]

No. V.

Conveyance of an equity of redemption, the purchaser covenanting to indemnify the vendor from the mortgage.

1. Parties.
2. Recital of mortgage in fee.
3. That principal is still due, but that all interest has been paid.
4. Of contract to purchase.
5. Testatum.
6. Habendum to purchaser in fee subject to mortgage.
7. Usual covenants from vendor that he has good right to convey.
8. For quiet enjoyment.
9. Freedom from incumbrance.
10. For further assurance.
11. Covenant from purchaser to discharge the mortgage.
12. To indemnify vendor from mortgage.
13. Declaration that mortgage shall be deemed the debt of the purchased premises.

No lease for year stamp will be required. Ad valorem stamp, 12*l.*

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*vendor*), of, &c., of the one part, and (*purchaser*), of, &c. of the other part.

Recital of mortgage in fee.

2. WHEREAS by indenture of release, expressed to be made in pursuance of the act for rendering a release as effectual for the conveyance of freehold estates, as a lease and release by the same parties, between the said (*vendor*), of the one part, and (*mortgagee*), of the other part, the hereditaments and premises hereinafter described, and which are also intended to be hereby granted and released, with their appurtenances, were released and conveyed unto and to the use of the said (*mortgagee*), his heirs and assigns, subject to a proviso for redemption and reconveyance on payment by the said (*vendor*), his heirs, executors, or administrators, to the said (*mortgagee*), his executors or administrators, of the sum of 1,000*l.*, and interest at the rate of 4*l.* for every 100*l.* by the year, at the time and in manner therein mentioned, but in payment whereof default was made.

That principal is still due, but that all interest has been paid.

3. AND WHEREAS the said principal sum of 1,000*l.* still remains owing to the said (*mortgagee*), and charged upon the said hereditaments and premises, but all interest for the same has been duly

paid up to the day of the date of these presents, as the said (*vendor*) doth hereby testify and declare.

Of contract to purchase.

4. And whereas the said (*purchaser*) has contracted with the said (*vendor*) for the purchase of the said hereditaments and premises in fee-simple (subject to the said recited mortgage debt of 1,000*l.*, so secured thereon, as aforesaid), but free from all other incumbrances, for the price of 1,700*l.*, which said sum of 1,000*l.* and 700*l.* make together the sum of 1,700*l.*

Testatum.

5. Now this Indenture witnesseth, that in pursuance of the said contract, and in consideration of the sum of 700*l.* sterling, paid by the said (*purchaser*) to the said (*vendor*), on the execution hereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, the said (*vendor*) doth by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, all, &c. [Here describe *the parcels*, and insert *the general words*], and all the estate, right, title and interest of him the said (*vendor*) therein.

Habendum to purchaser in fee subject to incumbrances.

6. To have and to hold the said , and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their appurtenances (subject to and charged with the said principal sum of 1,000*l.* and interest so as aforesaid owing from the said (*vendor*) to the said (*mortgagee*), and chargeable upon the said hereditaments and premises), unto the said (*purchaser*) and his heirs, to the use of the said (*purchaser*), his heirs and assigns for ever. (*a*)

Qualified covenants from vendor that he has good right to convey.

7. And the said (*vendor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*) and his heirs, that (notwithstanding any act or thing (except the said hereinbefore recited mortgage security) done or permitted by the said (*vendor*) to the contrary) he the said (*vendor*) now hath good right by these presents to grant and release the said hereditaments and premises, with their appurtenances, subject to the said mortgage debt, unto and to the use of the said (*purchaser*),

(*a*) If the property is intended to be limited to dower uses, substitute for the above clause Habendum clause No. I., clause 6, p. iii.

his heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents.

For quiet enjoyment.

8. And also that (notwithstanding any such act or thing as aforesaid) the said hereditaments and premises (but subject and chargeable as aforesaid), shall from time to time be peaceably and quietly held and enjoyed accordingly, without let, suit, eviction, ejection, hindrance or denial, of or by the said (*vendor*) or any other person or persons rightfully claiming under or in trust for him (save in respect of the said hereinbefore recited mortgage.)

Freedom from incumbrances.

9. And that, freely, clearly, and absolutely indemnified by the said (*vendor*), his heirs, executors or administrators, of, from, and against all former and other estates, rights, titles, liens, charges and incumbrances whatsoever, created or suffered by the said (*vendor*), or any other person or persons whomsoever rightfully claiming under him (save always and excepting the said hereinbefore recited mortgage security.)

For further assurance.

10. And moreover, that the said (*vendor*), and all persons rightfully claiming any estate or interest, legal or equitable, in the said hereditaments and premises, through, under or in trust for him, shall and will, from time to time, and at all times hereafter (but subject, nevertheless, and without prejudice to the said hereinbefore recited mortgage), at the request and costs of the said (*purchaser*), his heirs or assigns, enter into, execute and perfect all such further assurances, for the more perfectly or satisfactorily conveying, assuring, and confirming the said hereditaments and premises unto and to the use of the said purchaser, his heirs and assigns (subject and chargeable as aforesaid), as the said (*purchaser*), his heirs or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed.

Covenant from the vendor to discharge the mortgage.

11. And in consideration of the premises, the said (*purchaser*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*vendor*), his heirs, executors, administrators and assigns, that he the said (*purchaser*), his heirs, executors, administrators or assigns, will pay unto the said (*mortgagee*), his executors, administrators or assigns, the said mortgage debt or principal sum of 1,000*l.*,

so as aforesaid secured by way of mortgage, and charged upon the said hereditaments and premises, and now owing to the said (*mortgagee*), by virtue of the said hereinbefore recited indenture of release, and all interest which shall henceforth, from time to time, become due in respect thereof.

To indemnify vendor from the mortgage.

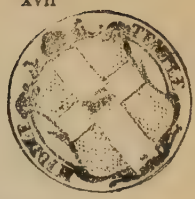
12. And also, that the said (*purchaser*), his heirs, executors or administrators will, from time to time, and at all times hereafter, save harmless and keep indemnified the said (*vendor*), his heirs, executors and administrators, and his and their lands and tenements, goods and chattels, of, from and against the said principal sum of 1,000*l.* and interest; and also of, from and against all actions, suits and other proceedings, either at law or in equity, which from time to time, or at any time, may be brought or prosecuted against the said (*vendor*), his heirs, executors or administrators, and also all costs, charges, damages, and expenses which he or they shall or may sustain, expend, or be put unto, by reason of the non-payment of the said principal sum of 1,000*l.* and interest as aforesaid.

Declaration that mortgage shall be deemed the debt of the purchased premises.

13. And the said (*purchaser*) doth hereby declare that the said principal sum of 1,000*l.* and interest, shall be deemed to be the debt of the said hereditaments and premises, and the person or persons upon whom the same shall devolve, whether by descent, devise or otherwise, shall not be entitled to make any claim upon the personal estate of the said (*purchaser*), for the discharge of the said mortgage debt, or any part thereof. (*b*)

In witness, &c.

(*b*) This clause is framed for the purpose of exonerating the purchaser's personal estate from the mortgage debt, the general rule being, that the personal estate shall be applied in discharge of all mortgage debts on real property purchased by a party, unless a contrary intent is expressed in direct terms, or can be inferred from the general context of his will: (*Cope* v. *Cope*, 2 Salk. 449; *Howell* v. *Price*, 1 P. Wms. 292; *Johnson* v. *Milksop*, 2 Vern. 112; *Serle* v. *St. Eloy*, 2 P. Wms. 386; *Lutkins* v. *Leigh*, Ca. temp. Talb. 54; *Galton* v. *Hancock*, 2 Atk. 436; *Barnwell* v. *Lord Cawdor*, 3 Mad. 453; *Rhodes* v. *Rudge*, 1 Sim. 84; *Halliwell* v. *Tanner*, 1 Russ. & Myl. 396.)



No. VI.

Conveyance by mortgagor and mortgagee to a purchaser in fee, the mortgagor entering into the usual qualified covenants for title. Variation where the original mortgage is for a term.

1. Parties.
2. Recital of mortgage.
3. That principal is still due, but that all interest has been paid.
4. Of contract to sell.
5. Testatum.
6. Habendum to dower uses.
7. Declaration to debar widow of dower.
8. Covenant from mortgagor that he has done no act to incumber.
9. Covenant from mortgagor that he has good right to convey.
10. For quiet enjoyment, and freedom from incumbrances.
11. For further assurance.

Stamp in lieu of lease for year, 1*l.* 15*s.* *Ad valorem stamp*, 25*l.*

Parties.

1. THIS INDENTURE, made the day of , A. D. 185 , BETWEEN (*mortgagee*) of, &c., of the first part (*mortgagor*), of, &c., of the second part (*purchaser*), of, &c., of the third part, and (*purchaser's dower trustee*) of, &c., of the third part.

Recital of mortgage.

2. WHEREAS by indenture of release dated the day of , in the year (expressed to be made in pursuance of the act for rendering a release as effectual for the conveyance of freehold estates, as a lease and release by the same parties), between the said (*mortgagor*) of the one part, and the said (*mortgagee*) of the other part, IT IS WITNESSED that in consideration of 1,500*l.* paid by the said (*mortgagee*) to the said (*mortgagor*), the said (*mortgagor*) did thereby grant, release and confirm, unto the said (*mortgagee*), and his heirs, ALL, &c. [HERE DESCRIBE *parcels.*] TO HOLD the same with their appurtenances unto and to the use of the said (*mortgagee*), his heirs and assigns for ever; SUBJECT NEVERTHELESS to a proviso for redemption and reconveyance, on payment by the said (*mortgagor*), his heirs, executors, administrators or assigns, unto the said (*mortgagee*), his executors, administrators or assigns, of the sum of 1,500*l.*, and interest, on a certain day therein mentioned, and long since past; AND ALSO

subject to the power of sale, and the powers, provisoes, declarations and agreements in the now reciting indenture of mortgage expressed, declared and contained.

That principal still remains due, but that all interest has been paid.

3. AND WHEREAS the said principal sum of 1,500*l.* still remains due and owing from the said (*mortgagor*) to the said (*mortgagee*), upon the said hereinbefore recited mortgage security, but all interest for the same has been duly paid up to the day of the date of these presents, as the said (*mortgagee*) doth hereby acknowledge.

Of contract to sell.

4. AND WHEREAS the said (*mortgagor*) has contracted to sell the said hereditaments and premises, and the fee-simple and inheritance thereof in possession, free from incumbrances to the said purchaser, for the sum of 2,500*l.*

Testatum.

5. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and in consideration of the sum of 1,500*l.* sterling paid by the said (*purchaser*) to the said (*mortgagee*), on the execution hereof (with the privity and approbation of the said (*mortgagor*), testified by his being a party hereto, and concurring herein), the receipt of which, and that the same is in full satisfaction and discharge of all moneys due to him in respect of the said hereinbefore recited mortgage security, the said (*mortgagee*) doth hereby acknowledge, and therefrom doth release, exonerate and for ever discharge the said (*purchaser*), his executors, administrators and assigns, and also the said (*mortgagor*), his heirs, executors and administrators, and also in consideration of the sum of 1000*l.* sterling, paid by the said (*purchaser*) to the said (*mortgagor*), the receipt of which said sum of 1000*l.*, and payment of the said sum of 1,500*l.*, in manner aforesaid, making together the sum of 2,500*l.*, the purchase-money of the said hereditaments and premises, the said (*mortgagor*) doth hereby acknowledge, and therefrom doth release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns. HE, the said (*mortgagee*), (at the request and by the direction of the said (*mortgagor*) testified as aforesaid), DOTH by these presents grant, release, and convey, and the said (*mortgagor*) DOTH by these presents grant, release, ratify and confirm unto the said (*purchaser*), and his heirs, ALL those the aforesaid messuages and tenements, and all and singular other the hereditaments and premises mentioned and

comprised in the said hereinbefore recited indenture of mortgage. AND all rights, members, and appurtenances to the said hereditaments and premises belonging or appertaining. AND all the estate, right, title and interest, both legal and equitable, of them the said (*mortgagor*) and (*mortgagee*) therein TOGETHER with all deeds, evidences and writings relating to the title of the same hereditaments and premises, in the possession, custody or power of the (*mortgagor*) and (*mortgagee*), or either of them, or which the said (*mortgagor*) can obtain without suit.

All-estate clause.

All-deeds clause.

6. TO HAVE AND TO HOLD the said , and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their and every of their rights, members and appurtenances, unto the said (*purchaser*) and his heirs, TO SUCH USES, upon such trusts, and for such ends, intents and purposes as the said (*purchaser*) shall from time to time, or at any time, by deed or deeds appoint, and in default of and until such appointment, in the meantime subject thereto. TO THE USE of the said (*purchaser*) and his assigns, for and during the term of his natural life, without impeachment of waste; and immediately after the determination of that estate by any means in his lifetime: TO THE USE of the said (*dower trustee*), his executors and administrators, during the life of, and *in trust* for the said (*purchaser*) and his assigns, and after the determination of the said hereinbefore lastly limited estate, TO THE USE of the said (*purchaser*), his heirs and assigns for ever.

Habendum to dower uses.

7. AND the said purchaser hereby declares that no woman, becoming his widow, shall be entitled to dower out of the said hereditaments and premises.

Declaration to debar widow of dower.

8. AND the said (*mortgagee*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that he the said (*mortgagee*), hath not done or permitted, or willingly or knowingly suffered, or been party or privy to any act, deed, matter or thing whatsoever, whereby or by reason or means whereof the said hereditaments and premises hereby granted and released, or any part of the same, are, is, can, shall or may be impeached, charged, incumbered, or prejudicially affected in any manner howsoever.

Covenant from mortgagee that he has done no act to incumber.

9. AND the said (*mortgagor*) doth hereby for himself, his heirs, executors and administrators, covenant with

Covenant from mortgagor that

he has good right to convey.

the said (*purchaser*), his heirs and assigns, that (notwithstanding any act, deed, matter or thing whatsoever, done or permitted by the said (*mortgagor*) to the contrary), they the said (*mortgagor*) and (*mortgagee*), or one of them, now have or hath in themselves or himself, good right, full power, and lawful and absolute authority to grant and release the said hereditaments and premises to the uses and in manner aforesaid, according to the true intent and meaning of these presents.

For quiet enjoyment and freedom from incumbrances.

10. And also, that the same hereditaments and premises shall be peaceably and quietly held and enjoyed accordingly, without any let, suit, eviction, ejection, interruption, denial, or disturbance of or by the said (*mortgagor*), or any other person or persons whomsoever, rightfully claiming or to claim, by, from, through, under or in trust for him. And that freely, clearly, and absolutely acquitted, released, exonerated and for ever discharged, or otherwise, by the said (*mortgagor*), his heirs, executors or administrators, at his or their own costs, well and sufficiently protected, saved harmless, and kept indemnified, of, from and against all former and other estates, rights, titles, liens, charges and incumbrances whatsoever, made or created by the said (*mortgagor*), or any other person or persons whomsoever, claiming or to claim by, from, through, under or in trust for him.

For further assurance.

11. And moreover, that the said (*mortgagor*), and all persons rightfully claiming any estate or interest, legal or equitable, in the said hereditaments and premises under or in trust for him, shall and will from time to time, and at all times hereafter, at the request and costs of the said (*purchaser*), his appointees, heirs or assigns, make, do, acknowledge, enter into, execute and perfect all such further and other lawful and reasonable acts and assurances in the law whatsoever, for the further, better, more perfectly or satisfactorily granting, releasing, conveying, assuring and confirming the said hereditaments and premises unto the said (*purchaser*) and his heirs, to the uses and in manner aforesaid, according to the true intent and meaning of these presents, as the said (*purchaser*), his appointees, heirs or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed.

In witness, &c.

No. VII.

Conveyance and mortgage by the same instrument where part of the purchase-money is to remain on mortgage.

1. Parties.
2. Recital of intended purchase, and of agreement that part of purchase-money is to remain on mortgage.
3. Testatum.
4. Habendum to purchaser, to the use of vendor.
5. Proviso for redemption and reconveyance on payment of principal and interest.
6. Power of sale.
7. Proviso that power of sale shall not debar vendor from his remedies by foreclosure.
8. That purchaser shall enjoy until default.
9. That vendor will not exercise power of sale without giving six months' previous notice.
10. Covenants from purchaser to pay mortgage-money and interest, and in the meantime to pay interest half-yearly, with general covenants for title.
11. Proviso, that if power of sale shall be exercised, purchaser, on concurring in conveyance, and entering into usual qualified covenants, to be released from absolute covenants previously entered into.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*vendor*), of, &c., of the one part, and (*purchaser*), of, &c., of the other part. Parties.

2. WHEREAS the said (*purchaser*) hath contracted with the said (*vendor*) for the purchase of the fee-simple and inheritance of the hereditaments and premises hereinafter described, and intended to be hereby granted and released, for the price of 2,000*l.*; and upon the treaty for the said purchase, it was agreed that the sum of 1,000*l.*, being one moiety of the said purchase-money, should be allowed to remain by way of mortgage on the said premises. Recital of intended purchase, and of agreement that part of purchase-money is to remain on mortgage.

3. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of 1,000*l.* sterling, this day paid by the said (*purchaser*) to the said (*vendor*), the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth, by these presents, release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns; and also in consideration of the further sum of 1,000*l.* sterling, Testatum.

being the remaining moiety of the said purchase-money, to be secured upon mortgage of the said hereditaments and premises in manner hereinafter mentioned, he the said (*vendor*) DOTH by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, ALL, &c. [HERE INSERT *parcels and general words, ut ante*, No. I., *clause* 5, p. ii.]

Habendum by purchaser to the use of vendor.

4. TO HAVE AND TO HOLD the said , and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their and every of their rights, members, and appurtenances, unto the said (*purchaser*) and his heirs, TO THE USE of the said (*vendor*), his heirs and assigns for ever. NEVERTHELESS, upon the trusts, and for the ends, intents and purposes, and with, under and subject to the powers, provisoes, charges, declarations and agreements hereinafter limited, expressed and declared of and concerning the same (that is say),

Proviso for redemption and reconveyance on payment of principal and interest.

5. UPON TRUST, to permit the said (*purchaser*), his heirs and assigns, to hold and enjoy, and to receive and take the rents issues and profits of the said hereditaments and premises until the day of next; and if the said (*purchaser*), his heirs, executors or administrators, shall, on such day of next, pay unto the said (*vendor*), his executors, administrators or assigns, the sum of 1,000*l.* sterling, being the remainder of the said purchase-money, together with interest for the same at the rate of 4*l.* for every 100*l.* by the year, without deduction, *then*, immediatey after such payment, the said (*vendor*), his heirs or assigns, will, at the request and costs of the said (*purchaser*), his heirs, executors, administrators or assigns, convey and assure the said mortgaged hereditaments and premises unto and to the use of the said (*purchaser*), his heirs or assigns, or otherwise, as the said (*purchaser*), his heirs or assigns shall direct, free from all incumbrances occasioned by the said (*vendor*), his heirs, or assigns in the meantime.

Power of sale.

6. PROVIDED ALWAYS, that if default shall be made in payment of the said sum of 1,000*l.*, or the interest thereof, or any part of the same respectively, at the time hereinbefore appointed for the payment thereof, contrary to the aforesaid proviso, and the

true intent and meaning of these presents, *then*, and in such case, and at any time thereafter, it shall be lawful for the said (*vendor*), his heirs, executors, administrators or assigns, and without the concurrence, and even against the consent of the said (*purchaser*), his heirs or assigns, to make sale and absolutely dispose of the said hereditaments and premises by public auction or private contract, either together or in parcels, as he or they shall think fit, and for such price as to him or them shall seem reasonable, and subject or not subject to any special or other conditions, or stipulations, relative to the title or evidence of title, or otherwise, as shall appear expedient, with liberty for him or them to buy in the same, without being responsible for any loss that may happen on account of such resale; and also with full power for him or them to rescind and annul, or alter and vary, the terms, conditions, and stipulations, of any contract which may be entered into for the sale of the said hereditaments and premises, or any part thereof, without being responsible for any loss that may be incurred thereby; AND IT IS HEREBY DECLARED that the receipt or receipts in writing of the said (*vendor*), his heirs, executors, administrators and assigns, or his or their agent or agents, to any purchaser or purchasers of the said hereditaments and premises, under the power of sale hereinbefore contained, shall effectually exonerate such purchaser or purchasers taking the same from all responsibility with respect to the application of the purchase-moneys therein expressed to be received, nor shall such purchaser or purchasers be obliged to inquire or take notice whether any sale or sales is or are necessary or proper for any of the purposes hereinbefore expressed, nor whether any default has been made in payment, as aforesaid. AND IT IS HEREBY FURTHER DECLARED, that in case of the hereditaments and premises, or any part of the same, shall be sold under the power of sale hereinbefore contained, the said (*vendor*), his heirs, executors, administrators or assigns, shall, out of the purchase-moneys arising therefrom, in the first place discharge all such costs as he or they shall have incurred in or about the said sale or sales, or in perfecting the title to the said hereditaments and premises, or otherwise in relation thereto; and in the next place shall retain

the said sum of 1,000*l.* and interest hereby secured, or so much thereof as shall then be undischarged; and shall pay the surplus (if any) to the said (*purchaser*) his heirs, executors, administrators, or assigns.

Proviso that power of sale shall not debar vendor of his right of foreclosure.

7. PROVIDED ALSO, that the said (*vendor*), his heirs, executors, administrators and assigns, shall, notwithstanding the power of sale hereinbefore contained, and concurrently therewith, have all the rights and remedies by foreclosure or otherwise, as a mortgagee in ordinary cases. [HERE INSERT *qualified covenants for title, &c. from the vendor, ut ante*, No. III., *clauses* 5, 6, 7, pp. viii., ix.]

That purchaser shall enjoy until default.

8. AND MOREOVER, that until default shall be made in payment of the said sum of 1,000*l.* and interest at the time and in manner aforesaid, the said (*purchaser*), his heirs and assigns, shall hold and enjoy, and receive and take the rents, issues, and profits of the said hereditaments and premises, without interruption or denial by the said vendor, his heirs or assigns, or any other person or persons whomsoever rightfully claiming under or in trust for him: *provided nevertheless*, that no purchaser or purchasers under the power of sale hereinbefore contained, shall be in anywise affected or prejudiced thereby.

That vendor will not exercise power of sale without giving purchaser six months' previous notice.

9. AND ALSO, that the said (*vendor*), his heirs, executors, administrators or assigns, will not exercise the power of sale hereinbefore contained, without giving six calendar months' previous notice thereof in writing to the said (*purchaser*), his heirs or assigns, or leaving the same at his or their last or usual known place of abode in England: *provided nevertheless*, that no purchaser or purchasers under such power of sale shall be in anywise affected or prejudiced for want of such notice being so given as aforesaid, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

Covenant from purchaser to pay mortgage money and interest, and in the meantime to pay interest half-yearly, with general covenants for title.

10. AND the said (*purchaser*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*vendor*), his heirs, executors, administrators and assigns, that he the said (*purchaser*), his heirs, executors or administrators, will punctually and truly pay unto the said (*vendor*), his executors, administrators and assigns, the said sum of 1,000*l.* sterling, together with interest for the same at the

rate of 4*l.* for every 100*l.* by the year, at the time and in the manner hereinbefore appointed for payment thereof. AND ALSO, THAT in case the said principal sum of 1,000*l.* or any part of the same, shall remain unpaid after the said day of , then that the said (*purchaser*), his heirs, executors, administrators, or assigns, will, during the continuance of this mortgage security, pay unto the said (*vendor*), his executors, administrators, or assigns, interest for the said sum of 1,000*l.* or so much thereof as shall be then owing, at the rate of 4*l.* for every 100*l.* by the year, by equal half-yearly payments, on the day of , and the day of , without deduction. AND FURTHER, that the said hereditaments and premises shall be held and enjoyed, according to the limitations and provisions hereinbefore contained, without any let, suit, eviction, ejection, interruption, molestation or denial, of or by the said (*purchaser*), or any person or persons whomsoever, and that free from all incumbrances whatsoever. AND MOREOVER, that the said (*purchaser*) and all persons rightfully claiming any estate or interest, legal or equitable, of or in the said hereditaments and premises, shall and will, from time to time, and at all times hereafter, at the request of the said (*vendor*), his heirs, executors, administrators or assigns, but at the costs of the said (*purchaser*), his heirs, executors, administrators or assigns (until the exercise of the aforesaid power of sale, or the absolute foreclosure of the mortgage of the said hereditaments and premises, and afterwards at the costs of the parties requiring the same), make, do, acknowledge, enter into, execute and perfect, or cause or procure to be made, done, acknowledged, entered into, executed, and perfected, all such further assurances for the more perfectly or satisfactorily assuring and confirming the said hereditaments and premises unto and to the use of the said (*vendor*), his heirs and assigns, according to the true intent and meaning of these presents, as the said (*vendor*), his heirs or assigns, or his or their counsel in the law, shall require.

Proviso that if power of sale shall be exercised, purchaser,

11. PROVIDED ALWAYS, that if the said hereditaments and premises, or any part of the same, shall be sold under the power of sale hereinbefore contained, and the said (*purchaser*), his heirs or assigns, shall

on concurring in conveyance, and entering into usual qualified covenants for title, to be released from absolute covenants previously entered into.

join in the conveyance to the purchaser, and thereby enter into such qualified covenants for title, quiet enjoyment, freedom from incumbrances, and for further assurance, as a purchaser under ordinary circumstances is entitled to require, then the absolute covenants hereinbefore entered into by the said (*purchaser*), in relation to the hereditaments so sold, shall from thenceforth become utterly void to all intents and purposes whatsoever.

In witness, &c.

No. VIII.

Conveyance in fee of the equity of redemption from mortgagor to the mortgagee, to uses to bar dower.

1. Parties.
2. Recital of mortgage by appointment.
3. Of contract to purchase equity of redemption.
4. Testatum.
5. Habendum to mortgagee's trustee to dower uses for the benefit of the mortgagee.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*mortgagor*) of, &c., of the first part; (*mortgagee*) of, &c., of the second part, and (*mortgagee's trustee*) of, &c., of the third part. [RECITE *conveyance to mortgagor to uses to bar dower, as in Prec.* No. 1, *clause* 2.] Parties.

2. AND WHEREAS, by indenture of appointment, bearing date on or about the day of , 185 , made between the said (*mortgagor*) of the one part, and the said (*mortgagee*) of the other part, the hereditaments and premises hereinafter described, and intended to be hereby granted and released, with their appurtenances, were appointed (*a*) unto and to the use of the said (*mortgagee*), his heirs and assigns for ever, subject to a proviso for redemption and reconveyance, on payment by the said (*mortgagor*), his heirs, executors, administrators, or assigns, unto the said (*mortgagee*), his executors, administrators or assigns, of the sum of 1,000*l.* and interest, and at the time and in manner therein mentioned, but in payment whereof default was made. [RECITE *that principal money is still owing, but that all interest has been paid, as in Prec.* No. III., *clause* 3.] Recital of mortgage by appointment.

3. AND WHEREAS the said (*mortgagee*) hath contracted with the said (*mortgagor*) for the purchase of the equity of redemption of the said hereditaments Of contract to purchase equity of redemption.

(*a*) If the premises were conveyed by grant and released, for "appointed" substitute "conveyed and assured."

and premises, at the price of 1,500*l.*, out of which it has been agreed that the said (*mortgagee*) shall retain the said sum of 1,000*l.* so due to him as aforesaid, in satisfaction of his said mortgage debt.

Testatum.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of 1,000*l.* sterling, so as aforesaid owing from the said (*mortgagor*) to the said (*mortgagee*), from the payment of which, and all claims and demands in respect whereof, the said (*mortgagee*) doth release the said (*mortgagor*), his heirs, executors, administrators and assigns for ever; and also, in consideration of the further sum of 500*l.* sterling, this day paid by the said (*mortgagee*) to the said (*mortgagor*), the receipt of which the said (*mortgagor*) hereby acknowledges, and therefrom doth by these presents release the said (*mortgagee*), his heirs, executors, administrators and assigns for ever (which said sums of 1,000*l.* and 500*l.* make together the sum of 1,500*l.*, the purchase-money of the said premises); and also, in consideration of the sum of 10*s.* at the said time paid by the said (*mortgagee's trustee*) to each of them the said (*mortgagor*) and (*mortgagee*), the receipt whereof is hereby acknowledged, the said (*mortgagee*) DOTH by these presents grant, release and convey, and the said (*mortgagor*) DOTH by these presents grant, release and confirm unto the said (*mortgagee's trustee*), and his heirs, ALL, &c. [HERE DESCRIBE *the parcels*, AND INSERT *general words, all-estate clause, and all-deeds clause, as in Prec.* No. I., *clause* 5.]

Habendum to mortgagee's trustee to dower uses for the benefit of mortgagee.

5. TO HAVE AND TO HOLD the said , and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*mortgagee's trustee*) and his heirs, to the uses, upon the trusts and for the ends, intents and purposes hereinafter declared (that is to say), TO SUCH USES, upon such trusts, and for such ends, intents and purposes as the said (*mortgagee*) shall from time to time, or at any time, by deed or deeds appoint; and in default of, and until such appointment, and subject thereto, TO THE USE of the said (*mortgagee*) and his assigns for the term of his natural life, without impeachment of waste; and after the determination of that estate by any means in his lifetime, TO THE USE of the said

(*trustee*), his executors and administrators, during the life of, and IN TRUST for, the said (*mortgagee*) and his assigns; and after the determination of the said hereinbefore lastly limited estate, TO THE USE of the said (*mortgagee*), his heirs and assigns, for ever. [HERE INSERT *declaration to bar dower*, AND ALSO *covenants for title, as in Prec.* No. I., *clause 7, et seq.*]

IN WITNESS, &c.

No. IX.

Conveyance by husband and wife to a sub-purchaser, the wife concurring to extinguish her dower.

1. Parties.
2. Recital of original contract.
3. Of contract with sub-purchaser.
4. Of request to vendor to convey.
5. That wife being entitled to dower will release the same.
6. Testatum.
7. Covenant from vendor that the deed shall be duly acknowledged.
8. Usual covenants for title.

Parties.

1. THIS INDENTURE, made the day of , 185 , BETWEEN (*vendor*) of, &c., and (*Christian name*), his wife, of the first part; (*mesne purchaser*) of, &c., of the second part; and (*sub-purchaser*) of, &c., of the third part; and (*purchaser's dower trustee*), of, &c., of the fourth part.

Recital of original contract.

2. WHEREAS the said (*mesne purchaser*) some time since contracted with the said (*vendor*) for the absolute purchase of the hereditaments and premises hereinafter described, and intended to be hereby granted and released, and the inheritance thereof in fee-simple, free from incumbrances, at the price of 900*l.*

Of contract with sub-purchaser.

3. AND WHEREAS the said (*sub-purchaser*) hath since contracted with the said (*mesne purchaser*) for the absolute purchase of the same hereditaments and premises, and the fee-simple and inheritance thereof, free from incumbrances, at the price of 1,050*l.*

Of request to vendor to convey.

4. AND WHEREAS the said (*mesne purchaser*) and (*sub-purchaser*) have severally requested the said (*vendor*) to convey the said hereditaments and premises to the said (*sub-purchaser*) and his heirs, in manner hereinafter mentioned.

That wife being entitled to dower will release the same.

5. AND WHEREAS the said (*Christian name*), the wife of the said (*vendor*), being entitled to dower out of the said hereditaments and premises, hath agreed to concur in these presents for the purpose of extinguishing the same in manner hereinafter appearing.

6. Now this Indenture witnesseth, that in pursuance of the said contract, and in consideration of the sum of 900*l.* sterling, this day paid by the said (*sub-purchaser*) to the said (*vendor*) (by the direction of the said (*mesne purchaser*), testified by his being a party hereto), the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth release, exonerate and for ever discharge the said (*sub-purchaser*), and also the said (*mesne purchaser*), and their respective heirs, executors, administrators and assigns; and also in consideration of the further sum of 150*l.* sterling, at the same time paid by the said (*sub-purchaser*) to the said (*mesne purchaser*), the payment and receipt, in manner aforesaid, of which said several sums of 900*l.* and 150*l.*, making together the said sum of 1,050*l.*, the purchase-money for the said hereditaments and premises, the said (*mesne purchaser*) hereby acknowledges, and therefrom doth release, exonerate and for ever discharge the said (*sub-purchaser*), his heirs, executors, administrators, and assigns: He, the said (*vendor*), by the direction of the said (*mesne purchaser*), (testified as aforesaid), doth by these presents grant, release and convey, She, the said (*Christian name*), the wife of the said (*vendor*), for the purpose of extinguishing her right of dower in the said premises, and with the concurrence of the said (*vendor*) doth by these presents remise, release and quit claim, and the said (*mesne purchaser*) doth by these presents grant, release, and confirm unto the said (*sub-purchaser*) and his heirs, all, &c. [Here describe *the parcels;* insert *general words, ut ante*, No. I., *clause* 5, *and all-estate clause, and all-deeds clause, as in* No. III., *clause* 5, Habendum, *ut ante*, No. III., *clause* 6, *and declaration to bar dower, ib.* p. vii., *clause* 7.] Testatum.

7. And the said (*vendor*) doth hereby, for himself, his heirs, executors and administrators, covenant with the said (*sub-purchaser*), his heirs and assigns, that these presents shall forthwith, at the costs of the said (*vendor*), be acknowledged by the said (*Christian name*) his wife, she hereby consenting, and otherwise perfected with the solemnities required by law for rendering the deeds of married women effectual to extinguish their interests in landed property. Covenant from vendor that the deed shall be duly acknowledged.

8. And also that (notwithstanding any act or deed Usual cove-

nants for title.

done or permitted by the said (*vendor*) to the contrary), the said (*mesne purchaser*) and (*vendor*), or one of them, now have or hath in themselves, or himself, full power to grant and release the said hereditaments and premises unto and to the use of the said (*sub-purchaser*), his heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents. [INSERT *the remaining covenants for quiet enjoyment*, &c., *freedom from incumbrances, and for further assurance*, *ut ante*, No. I., *clauses* 10, 11, p. iv.]

IN WITNESS, &c.

No. X.

Memorandum of acknowledgment to be indorsed on deed.

This deed, marked A., was this day produced before us [*or* me, *as the case may be*], and acknowledged by (*Christian name*), the wife of the (*vendor*) thereinnamed, to be her act and deed, previously to which, the said (*wife*) was examined by us [*or* me, *as the case may be*] separately and apart from her husband, touching her knowledge of the contents of the said deed, and declared the same to be freely and voluntarily executed by her.

[*Signature of Judge, Master, or Commissioners, as the case may be.*]

No. XI.

Certificate of acknowledgment to be engrossed on a separate piece of parchment.

THESE ARE TO CERTIFY, that on the day of , in the year 185 , before us, two of the perpetual commissioners appointed for (*a*) [HERE DESCRIBE *district*] for taking the acknowledgments of married women, pursuant to an act made and passed in the third and fourth years of the reign of his late Majesty King William the Fourth, intituled "An Act for the Abolition of Fines and Recoveries, and for the Substitution of more Simple Modes of Assurance," appeared personally (*Christian and surname of wife*), wife of (*husband*), and produced a certain indenture marked A., bearing date, &c., and made between parties (*describing them*), and acknowledged the same to be her act and deed. And we (*b*) do hereby certify that the said (*wife*) was, at the time of acknowledging the said deed, of full age and competent understanding; and that she was examined by us (*c*) apart from her husband, touching her knowledge of the contents of the said deed, and that she freely and voluntarily consented to the same.

(*a*) Or "before me, Sir T. Wilde, Lord Chief Justice of the Court of Common Pleas, at Westminster [or before the undersigned Sir Edward Vaughan Williams, Knight, one of the judges of the Court of Common Pleas, at Westminster] [or before me, A. B , one of the Masters in ordinary of the Court of Chancery] [*or otherwise as the case may be.*]

(*b*) Or "I."

(*c*) Or "me."

No. XII.

Conveyance by heir and executor of a deceased mortgagee, and the owner of the equity of redemption, to a purchaser to uses to bar dower.

1. Parties.
2. Recital of death of mortgagee, his will, and appointment of executors.
3. Of probate of will.
4. Of contract to purchase.
5. That principal is still due, but that all interest has been paid.
6. Testatum.
7. Heir and executors covenant that they have not encumbered.

1. THIS INDENTURE, made the day of A.D. 185 , BETWEEN (*heir of deceased mortgagee*), of, &c., of the first part; (*executors of mortgagee, &c.*), of, &c., of the second part; (*owner of equity of redemption*), of, &c., of the third part; (*purchaser*), of, &c., of the fourth part; and *purchaser's dower trustee*), of the fifth part. [RECITE FIRST, *the conveyance to the owner to uses to bar dower, ut ante*, No. I., *clause* 2; SECONDLY, *the mortgage, ut ante*, No. VI., *clause* 2, p. xvii.] Parties.

2. AND WHEREAS the said (*mortgagee*) died on or about the day of , 185 , having duly made and published his will, executed and attested as by law is required, bearing date on or about the day of , 185 , and appointed the said (*executors*) executors thereof, but died intestate as to the legal estate vested in him by the said hereinbefore recited mortgage-deed, leaving the said (*heir*), his eldest son and heir-at-law, him surviving. Recital of death of mortgagee, his will and appointment of executor.

3. AND WHEREAS the said hereinbefore-recited will was duly proved by the said (*executors*) in the Prerogative Court of the Archbishop of Canterbury, on the day of last. Of probate of will.

4. AND WHEREAS the said (*purchaser*) has contracted with the sad (*owner*) for the purchase of the said hereditaments and premises, and the inheritance Of contract to purchase.

thereof, in fee-simple, free from incumbrances, for the price of 5,000*l.*

That principal is still due, but that all interest has been paid.

5. And whereas the said sum of 2,000*l.* still remains charged upon the said premises, and owing upon the said hereinbefore-recited mortgage security, but all interest for the same has been paid up to the day of the date of these presents, as the said (*executors*) hereby acknowledge.

Testatum.

6. Now this Indenture witnesseth, that in pursuance of the said contract, and in consideration of the sum of 2,000*l.* sterling, this day paid by the said (*purchaser*) to the said (*executors*), (by the direction of the said (*owner*), testified by his being a party hereto), the receipt of which the said (*executors*) hereby acknowledge, and also that the same is in full satisfaction of all moneys owing to them upon the said hereinbefore-recited mortgage, and therefrom do by these presents release the said (*owner*), and also the said (*purchaser*) respectively, and their respective heirs, executors, administrators and assigns for ever; also in consideration of the sum of 3,000*l.* sterling, the residue of the said purchase-money at the same time paid by the said (*purchaser*) to the said (*owner*), the receipt and payment, in manner aforesaid, of which said two several sums of 2,000*l.* and 3,000*l.*, making together the sum of 5,000*l.*, the purchase-money of the said hereditaments and premises, the said (*owner*) hereby acknowledges, and therefrom doth by these presents release the said (*purchaser*) his heirs, executors, administrators and assigns for ever; and also in consideration of the sum of 5*s.* at the same time paid by the said (*purchaser*) to the said (*heir*), the receipt whereof is hereby acknowledged, the said (*heir*) (in respect only of his legal estate, as such heir-at-law of the said (*mortgagee*), deceased, as aforesaid, and by the direction of the said (*owner*) testified as aforesaid) doth by these presents grant, the said (*executors*) (as such executors as aforesaid) do by these presents release, and the said (*owner*) doth by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, all, &c. [Here describe *parcels;* insert *general words, all-estate clause, and all-deeds clause,* Habendum *to uses, and declaration to bar dower, as in Prec.* No. I., *clauses* 5. 6, pp. ii., iii.]

7. And each of them the said (*heir*) and (*executors*) do hereby for themselves respectively, and for their respective heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that they the said (*heir*) and (*executors*) respectively, have not, at any time or times heretofore, done or permitted any act, whereby the said hereditaments and premises, or any part of the same, can be encumbered. [Add *usual qualified covenants from owner of equity of redemption, that he has good right to convey, for quiet enjoyment, freedom from incumbrances, and for further assurance, ut ante,* No. I., *clauses* 8 *to* 11, *inclusive,* pp. iii., iv.]

Heir and executors covenant that they have done no act to incumber.

In witness, &c.

No. XIII.

Conveyance of an undivided moiety of freehold by a tenant in common to a purchaser.

1. Parties.
2. Recital of deceased testator's will devising parcels to purchaser.
3. Of contract to purchase.
4. Testatum.
5. Habendum to purchaser in fee.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*vendor*), of, &c., of the one part, and (*purchaser*) of, &c., of the other part. [RECITE *conveyance to testator to uses to bar dower, ut ante*, No. I., *clause* 2.]

Recital of deceased testator's will, devising parcels to purchaser.

2. AND WHEREAS the said (*testator*), by his last will, duly executed and attested as by law is required, bearing date on or about the day of , 185 , amongst other devises and bequests, devised the said hereditaments and premises unto the said (*vendor*) and C. D., their heirs and assigns, for ever, as tenants in common.

Of contract to purchase.

3. AND WHEREAS the said (*purchaser*) has agreed with the said (*vendor*) for the purchase of the undivided moiety of and in the said hereditaments and premises so as aforesaid devised to the said (*vendor*), and the fee-simple and inheritance thereof, free from incumbrances, for the price of 700*l.*

Testatum.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of 700*l.* sterling, paid by the said (*purchaser*) to the said (*vendor*) on the execution hereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth by these presents release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns; he the said (*purchaser*) DOTH by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, ALL THAT the undivided moiety, or equal half-part or share, of the said vendor of and in ALL, &c. [HERE

DESCRIBE *the parcels*, INSERT *general words, and all-estate clause, as in Prec.* No. I., *clause* 5.]

5. TO HAVE AND TO HOLD the said undivided moiety, or equal half-part or share of and in all and singular the said hereditaments and premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*purchaser*) and his heirs, (*a*) [to the use of the said (*purchaser*), his heirs and assigns, for ever.] [INSERT *covenants for title, ut ante*, No. I., *clause* 8.] Habendum.

IN WITNESS, &c.

(*a*) If the property is intended to be limited to dower uses, substitute for words within brackets, *clauses* 6, 7, *in Prec.* No. I., p. iii.

No. XIV.

Conveyance by two tenants in common, one of whom is a married woman, and whose husband concurs with her in the conveyance, to a purchaser to uses to bar dower.

1. Parties.
2. Recital that deceased testator was seised of the premises at the time of making his will.
3. Of death of testator, and of probate of his will.
4. Recital of contract to purchase.
5. Testatum.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN A. (*tenant in common*), of, &c., of the first part (*husband*), of, &c., and B., (*his wife, other tenant in common*), of the second part (*purchaser*), of, &c., of the third part, and (*dower trustee*), of, &c., of the fourth part.

Recital that deceased testator was seised of the premises at the time of making his will.

2. WHEREAS (*testator*), late of, &c., deceased, was, at the time of making his will, hereinafter recited, and at his death, seised in fee-simple in possession of the hereditaments and premises hereinafter described, and intended to be hereby granted and released with their appurtenances, and being so seised by his said will, bearing date on or about the day of , and duly executed and attested as by law required, (amongst other hereditaments and premises) devised the hereditaments and premises hereinafter described, and intended to be hereby granted and released unto his two nieces, the said A., and B. the wife of the said (*husband*), their heirs and assigns, as tenants in common, and appointed the said A., and B. the wife of the said (*husband*), joint executrixes of his said will.

Of death of testator and probate of his will.

3. AND WHEREAS the said (*testator*) died on or about the day of , in the year 18 , without having altered or revoked his said will, which was duly proved by the said A., and B. the wife of the said (*husband*), in the Prerogative Court of the Archbishop of Canterbury, on the day of .

4. And whereas the said (*purchaser*) has contracted with the said A. and (*husband*), and B. his wife, for the purchase of the hereditaments and premises hereinafter described, being a portion of the hereditaments and premises so devised to them as aforesaid, at the price of 750*l.* Of contract to purchase.

5. Now this Indenture witnesseth, that in pursuance of the said contract, and in consideration of the sum of 750*l.* sterling, paid by the said (*purchaser*) to the said A. and (*husband*), and B. his wife, on the execution hereof, the receipt of which the said A. and (*husband*), and B. his wife, hereby acknowledge, and therefrom do, and each and every of them doth, by these presents release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, they the said A. and (*husband*), and B. his wife, do, and each of them doth, by these presents grant and confirm unto the said (*purchaser*), all, &c. [Here describe *the parcels*, insert *general words, and the* Habendum *and limitation to uses and declaration to bar dower, and covenants for title, ut ante*, No. I., *clauses* 5 *to* 8 *inclusive*, pp. ii., iii. Insert also *covenant from the husband, that deed shall be acknowledged by his wife, ut ante*, No. IX., *clause* 7, p. xxxi.] Testatum.

In witness, &c.

No. XV.

Conveyance in fee by a mortgagor to a purchaser under a power of sale, in which the mortgagor does not concur.

1. Parties.
2. Recital of mortgage and power of sale.
3. That default was made in payment, and that principal and an arrear of interest are still due.
4. Of contract to sell.
5. Testatum.
6. Habendum to purchaser in fee.
7. Covenant from mortgagee that he has done no act to incumber.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*mortgagee*), of, &c., of the one part, and (*purchaser*), of, &c., of the other part.

Recital of mortgage and power of sale.

2. WHEREAS by indenture bearing date on or about the day of , in the year , and made between (*mortgagor*), of the one part, and the said (*mortgagee*), of the other part, IT IS WITNESSED that in consideration of £ therein expressed to be paid by the said (*mortgagee*) to the said (*mortgagor*), the said (*mortgagor*) did thereby grant and release unto the said (*mortgagee*), his heirs and assigns, all and singular the hereditaments and premises hereinafter described, and which are intended to be hereby granted and released, TO HOLD the same, with the appurtenances, unto and to the use of the said (*mortgagee*), his heirs and assigns for ever, *subject* to a proviso for redemption and reconveyance, on payment by the said (*mortgagor*), his heirs, executors, administrators or assigns, unto the said (*mortgagee*), his executors, administrators or assigns, of the sum of £ , and interest at the rate of 4*l.* for every 100*l.* by the year, on the day of then next; and with a further proviso, that in case default should be made in payment of the said principal sum of £ and interest thereby secured, or any part of the same, it should be lawful for the said (*mortgagee*), his heirs, executors, administrators or assigns, at any time thereafter, without

the concurrence, and even against the consent of the said (*mortgagor*), his heirs or assigns, to sell the said hereditaments and premises by public auction or private contract; and it was thereby declared that the receipt of the said (*mortgagee*), his heirs, executors, administrators or assigns, should be a sufficient indemnity to purchasers, and exonerate them from all responsibility with respect to the application of the purchase-moneys; and also that such purchasers should not be obliged to inquire whether any such sale or sales was or were necessary for the purposes of the said mortgage, or whether any default had been made in payment as aforesaid.

3. AND WHEREAS default made in payment of the said sum of £ and interest at the time appointed by the said hereinbefore-recited proviso, and the same still remains due to the said (*mortgagee*), together with an arrear of interest. That default was made in payment, and that principal and an arrear of interest are still due.

4. AND WHEREAS the said (*mortgagee*), in exercise of the said recited power of sale, hath contracted with the said (*purchaser*) for the sale to him of the said hereditaments and premises free from incumbrances for the sum of £ Of contract to sell.

5. NOW THIS INDENTURE WITNESSETH, that in order to complete the said sale, and in consideration of the sum of £ sterling, paid by the said (*purchaser*) to the said (*mortgagee*) on the execution hereof, the receipt of which the said (*mortgagee*) hereby acknowledges, and therefrom doth release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, HE the said (*mortgagee*) DOTH, by these presents, grant, release and confirm unto the said (*purchaser*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels*, INSERT *general words, all-estate clause, and all-deeds clause, as in Prec.* No. I., *clause* 5.] Testatum.

6. TO HAVE AND TO HOLD the said and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*purchaser*), and his heirs,(*a*) [TO THE USE of the said (*purchaser*), his heirs and assigns for ever,] discharged from the said sum of £ , and all interest Habendum.

(*a*) If the property is to be limited to dower uses, omit the words within the brackets.

for the same, and all equity and right of redemption, and all claims and demands whatsoever, under or by virtue of the said hereinbefore recited indenture of appointment.(*b*)

Covenant from mortgagee that he has done no act to incumber.

7. And the said (*mortgagee*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*) and his heirs, that he the said (*mortgagee*) hath not made, done, committed, or permitted any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, the said hereditaments and premises hereby granted and released, or any part of the same, can be impeached, charged, or incumbered.

In witness, &c.

(*b*) If limited to dower uses, add clause 6, in *Prec.* No. I.

No. XVI.

Conveyance by the heir and personal representative of a vendor, who dies pending the contract, to a purchaser to dower uses, and covenant to produce title-deeds.

1. Parties.
2. Recital of contract to purchase.
3. Of death of vendor before executing conveyance.
4. Testatum.
5. Recital that title-deeds relate as well to other lands of greater value descended on heir.
6. Covenant by the heir to produce the deeds.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*heir*), of, &c., eldest son and heir-at-law of (*ancestor*), of, &c., esquire, deceased, of the first part; (*executors*), of, &c., of the second part; (*purchaser*), of, &c., of the third part; and (*dower trustee*) of the fourth part. Parties.

2. WHEREAS by articles of agreement in writing bearing date on or about the day of , the said (*purchaser*) contracted with the said (*ancestor*) for the absolute purchase of the hereditaments and premises hereinafter described, and the inheritance thereof in fee-simple, at the price of 1,500*l*. Recital of contract to purchase.

3. AND WHEREAS the said ancestor died on or about the day of , leaving the said (*heir*) his eldest son and heir-at-law him surviving, having duly made and published his last will, executed and attested as by law is required, bearing date on or about the day of , and appointed the said (*executors*) joint executors of his said will, who duly proved the same in the Prerogative Court of the Archbishop of Canterbury on the day of last. Of death of vendor before executing conveyance.

4. NOW THIS INDENTURE WITNESSETH, that for perfecting the said contract, and in consideration of the sum of 1,500*l*. sterling, paid by the said (*purchaser*) to the said (*executors*), on the execution Testatum.

hereof, the receipt of which the said (*executors*) hereby acknowledge, and therefrom DO by these presents release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, and also in consideration of the sum 5*s.* at the same time paid by the said (*purchaser*) to the said (*heir*), the receipt whereof is hereby acknowledged, the said (*heir*), (by the direction of the said (*executors*), testified by their being parties hereto), DOTH by these presents grant, release and convey, and the said (*executors*) DO, by these presents, release and confirm unto the said purchaser and his heirs, ALL, &c. [HERE INSERT *parcels, general words, and all-estate clause* (OMITTING *all-deeds clause*), *as in Prec.* No. I., *clause* 5; HABENDUM *to uses and declaration to bar dower, ib., clauses* 6, 7. INSERT ALSO *covenant from heir, that he has done no act to incumber, as in last precedent, clause* 7, p. xliv.]

Recital that title-deeds relate as well to other lands of greater value descended on heir.

5. AND WHEREAS the deeds and writings specified in the schedule hereunder written, relate as well to the title of the hereditaments and premises hereby granted and released, as of certain other hereditaments of greater value of the said heir, descended upon and inherited by him from the said (*ancestor.*)

Covenant by heir to produce the deeds.

6. NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, the said (*heir*) doth hereby, for himself, his heirs, executors and administrators, covenant with the said (*purchaser*) and his heirs, that he the said (*heir*), his heirs or assigns (unless prevented by fire, or other inevitable accident), will, from time to time, and at any time, at the request and costs of the said (*purchaser*), his appointees, heirs or assigns, produce and show forth in England, unto the said (*purchaser*), his appointees, heirs or assigns, or his or their attorney, solicitor, or agent, or counsel, or before any court or courts of law or equity, or upon any commission for the examination of witnesses, or otherwise, as occasion shall require, the said deeds and writings, in manifestation, defence and support of the title of the said (*purchaser*), his appointees, heirs or assigns to the said hereditaments and premises, or any part of the same; *and* at the like request and costs of the said (*purchaser*), his appointees, heirs or assigns, furnish him and them with true and attested or other copies, extracts or abstracts,

and permit the same to be compared with the originals; and also will in the meantime keep and preserve the same deeds and writings undefaced, unobliterated and uncancelled.

In witness, &c.

The Schedule to which the above-written Indenture refers.

Date of Document.	Nature of Document.	Names and Description of Parties.
1st and 2nd March, 1801	Indentures of lease and release	Between A. B., of the one part, and C. D. of the other part.
12th and 13th May, 1824	Indentures of lease and release	Between C. D., of the one part, and E. F., of the other part.
12th July, 1847 ...	Probate copy of will of this date	Of the said (*ancestor*).

No. XVII.

Covenant to produce title-deeds contained in a distinct deed from the conveyance.

1. Parties.
2. Recital of purchase by covenantee.
3. That title-deeds relate as well to the title of hereditaments of greater value conveyed by vendor to covenantor.
4. Covenant from covenantor to produce title-deeds and other documents.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*covenantor*), of, &c., of the one part, and (*covenantee*), of, &c., of the other part.

Recital of purchase by covenantee.

2. WHEREAS by indenture bearing even date with these presents, and made between (*vendor*), of the first part; the said (*covenantee*), of the second part; and (*his dower trustee*), of the third part, IT IS WITNESSED, that in consideration of £ , therein expressed to be paid by the said (*covenantee*) to the said (*vendor*), the said (*vendor*) did thereby grant and release unto the said (*covenantee*) and his heirs, ALL, &c. [HERE DESCRIBE *the parcels*], TO HOLD the same, with the appurtenances, unto the said (*covenantee*) and his heirs, (*a*) TO SUCH USES, upon such trusts, and for such ends, intents and purposes as the said (*covenantee*) should from time to time, or at any time by deed or deeds appoint; and in default of such appointment and subject thereto; TO THE USE of the said (*covenantee*) and his assigns for life, with a limitation TO THE USE of the said (*dower trustee*) during the life of, and in trust for the said (*covenantee*) and his assigns, with the ultimate limitation TO THE USE of the said (*covenantee*), his heirs and assigns for ever.

That title-

3. AND WHEREAS the deeds and writings specified

(*a*) If the property is simply to be conveyed in fee, substitute for the dower uses—

"TO THE USE of the said (*purchaser*), his heirs and assigns for ever."

and set forth in the schedule hereunder written, relate as well to the title of the said hereditaments and premises hereinbefore described, as to certain other hereditaments of greater value, which were some time since conveyed by the said (*vendor*) to the said (*covenantor*), to whom the said deeds and writings were delivered, as the largest purchaser, upon his agreeing to enter into the covenant for their production as hereinafter mentioned.

deeds relate as well to hereditaments of greater value conveyed by vendor to covenantor.

4. Now this Indenture witnesseth, that in pursuance of the said agreement, and in consideration of the premises, the said (*covenantor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*covenantee*), his heirs and assigns, &c. [Here insert *covenant for production, as in last precedent.*]

In witness, &c.

No. XVIII.

Conveyance by the assignees of a bankrupt to a purchaser in fee, to uses to bar dower; a mortgagee in fee concurring to convey the legal estate, and the bankrupt, for the purpose of entering into covenants for title, &c.

1. Parties.
2. Recital of mortgage in fee.
3. Of further charge.
4. Of fiat in bankruptcy and appointment of assignees.
5. Of contract for purchase.
6. That principal, and also an arrear of interest, is still due.
7. That bankrupt will concur in conveyance.
8. Testatum.
9. All-estate and all-deeds clause.
10. Covenants from mortgagee and assignees that they have done no act to incumber.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*mortgagee*) of, &c., of the first part; (*official assignee*) and (*assignees of creditors*), (assignees of the estate and effects of (*bankrupt*) late of, &c. a bankrupt), of the second part; the said (*bankrupt*) of the third part, (*purchaser*) of, &c. of the fourth part, and (*purchaser's dower trustee*) of, &c. of the fifth part. [INSERT *recital of mortgage by demise from bankrupt to mortgagee, ut ante*, No. IV., *clause* 2, p. x.]

Recital of mortgage in fee.

2. AND WHEREAS, by indenture, dated on or about the day of , and made between the said (*bankrupt*) of the one part, and the said (*mortgagee*) of the other part, *after reciting* that default had been made in payment of the said sum of 2,000*l.* and that the same was still remaining due to the said (*mortgagor*), together with the sum of 150*l.* for an arrear of interest; and that the said (*bankrupt*) had applied to the said (*mortgagor*) to advance him the further sum of 1,000*l.*, which the said (*mortgagee*) had agreed to do, upon having the said mortgaged premises conveyed and assured to him in fee simple in manner thereafter mentioned. IT IS WITNESSED, that, in consideration of the sum of 2,150*l.* so due to the said (*mortgagee*) for such principal moneys and interest as aforesaid, and also in consideration of the further sum of 1,000*l.* then advanced to him by the said (*mortgagee*), making altogether the sum of 3,150*l.*, the said (*bankrupt*) did thereby release and confirm unto the said (*mortgagee*) and his heirs, ALL and

singular the aforesaid mortgaged hereditaments and premises, TO HOLD the same with the appurtenances, unto and to the use of the said (*mortgagee*), his heirs and assigns for ever, subject to a proviso for redemption and reconveyance, on payment by the said (*bankrupt*), his heirs, executors, administrators or assigns, unto the said (*mortgagee*), his executors, administrators or assigns, of the sum of 3,150*l.* with interest for the same at the rate of 5*l.* for every 100*l.* by the year, at the time and in manner therein mentioned, but in payment whereof default was made.

Of further charge.

3. AND WHEREAS, by indenture dated on or about the day of , indorsed on the said hereinbefore recited indenture, and made between the said (*bankrupt*) of the one part, and the said (*mortgagee*) of the other part; *after reciting* that default had been made in payment of the said sum of 3,150*l.* which was then still due, and also the further sum of 175*l.* for interest thereon, and that the said (*bankrupt*) had requested the said (*mortgagee*) to advance him the further sum of 75*l.*, the said (*bankrupt*) did thereby further charge the said mortgaged premises, as well with the said two several sums of 175*l.* and 75*l.* making together the sum of 250*l.*, as also with the said sum of 3,150*l.* then already secured thereon, and interest for the same at the rate of 5*l.* for every 100*l.* by the year.

Of fiat in bankruptcy, appointment of assignees.

4. AND WHEREAS, a fiat in bankruptcy, under the hand of the Lord High Chancellor of Great Britain, was on the day of , issued against the said (*bankrupt*), who has been duly found a bankrupt, and the said (*official assignee*) is the official assignee under the said fiat, and the said (*creditors' assignees*) have been duly chosen and appointed assignees of the estate and effects of the said (*bankrupt.*)

Of contract for purchase.

5. AND WHEREAS, the hereditaments and premises hereinafter described, forming part of the said bankrupt's estate, were on the day of offered for sale by public auction by the said (*creditors' assignees*), at (*place of sale*), according to certain printed conditions of sale, at which sale the said (*purchaser*), being highest bidder, was declared the purchaser at the sum of 3,795*l.*

That principal, and also an arrear of

6. AND WHEREAS, the principal sum of 3,400*l.* is still owing to the said (*mortgagee*), upon his said recited mortgage security, and also the sum of 163*l.*

interest, is still due.

for an arrear of interest thereon, making altogether the sum of 3,563*l.*

That bankrupt will concur in conveyance.

7. AND WHEREAS, the said (*bankrupt*) at the request of the said (*provisional assignee*), and (*creditors' assignees*), hath agreed to concur in these presents in manner hereinafter appearing.

Testatum.

8. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract, and in consideration of the sum of 3,563*l.* sterling, paid by the said (*purchaser*) to the said (*mortgagee*), with the privity and approbation of the said (*provisional assignee*) and (*creditors' assignees*), testified by their being parties hereto and concurring herein), the receipt of which the said (*mortgagee*) doth hereby acknowledge, and also that the same is in full satisfaction of all moneys owing to him in respect of the said recited mortgage securities, and of and from the same and every part thereof, doth release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors and administrators; ALSO, in consideration of the further sum of 32*l.* sterling, at the same time as aforesaid paid by the said (*purchaser*) to the said (*official assignee*), the receipt and payment of which said two several sums of 3,563*l.* and 32*l.* making together the sum of 3,595*l.* the purchase-money of the said hereditaments and premises, the said (*official assignee*) and (*creditors' assignees*) do hereby acknowledge, and of and from the same and every part thereof, do and each and every of them doth, acquit, release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns; AND ALSO in consideration of the sum of 5*s.* at the same time as aforesaid paid by the said (*purchaser*) to the said (*bankrupt*), the receipt whereof is hereby acknowledged, the said (*mortgagee*), (at the request and by the direction of the said (*official assignee*) and (*creditors' assignee*) testified as aforesaid), DOTH by these presents grant, release and convey, the said (*official assignee*) and (*creditors' assignees*), (as such assignees as aforesaid and according to their estates and interests in the premises), DO, and each and every of them DOTH by these presents grant and release, and the said (*bankrupt*) DOTH by these presents grant, release, ratify and confirm unto the said (*purchaser*) and his heirs, ALL, &c., [DESCRIBE *parcels and insert general words, ut ante*, No. II. *clause* 5, p. ii.]

9. AND all the estate, right and interest, both legal and equitable, of them the said (*mortgagee*), (*official assignee*), (*creditors' assignees*) and (*bankrupt*), and of each and every of them, of, in, to, out of, or upon the said hereditaments and premises, TOGETHER with all deeds, evidences and writings relating to the title of the same hereditaments and premises, in the custody or power of the said several parties hereto of the first three parts, or either of them, or which they, or either of them, can obtain without suit. [ADD *habendum to dower uses, declaration to bar dower, and qualified covenants from bankrupt, that he has good right to convey, for quiet enjoyment, and freedom from incumbrances, and for further assurance, ut ante*, No. I., *clauses* 6 *to* 11 *inclusive*, pp. iii., iv.]

All-estate clause.

All-deeds clause.

10. AND the said (*mortgagee*), (*official assignee*), and (*creditors' assignees*), but each for his own acts only, do hereby severally covenant with the said (*purchaser*), his heirs and assigns, that they the said (*mortgagee*), (*official assignee*), and (*creditors' assignees*) respectively, have not done or permitted, or willingly or knowingly suffered, or been party or privy to any act, deed, matter or thing whatsoever, whereby or by reason or means whereof the said hereditaments and premises hereby granted and released, or any part thereof, with their appurtenances, are, is, can, shall or may be impeached, charged, incumbered or prejudicially affected in any manner howsoever.

Covenants from mortgagee and assignee that they have done no act to incumber.

IN WITNESS, &c.

No. XIX.

Conveyance by the executors and infant heir of a deceased mortgagee, under an order of the Court of Chancery, the mortgagor concurring, and entering into covenants for title.

1. Parties.
2. Recital of minority of heir and order of court.
3. Testatum.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*heir*), of, &c., of the first part, (*executors*), of, &c., of the second part, (*mortgagor*), of, &c., of the third part, (*purchaser*), of, &c., of the fourth part, and (*his trustee*), of, &c., of the fifth part. [RECITE *mortgage in fee, ut ante*, No. V., *clause* 2; *death of mortgagee, his will and probate, and that principal money is still owing, and contract to purchase, ut ante*, No. IX., *clauses* 2, 3, 4, *and* 5.]

Recital of minority of heir and order of court.

2. AND WHEREAS the said (*heir*), being a minor, of the age of fourteen years or thereabouts, it was, by an order of V.-C. Sir J. W., dated the day of , and duly made upon the petition of the said (*executors*) and (*mortgagor*), and the report of Master (J. S.) thereon, ordered, that the said (*heir*) should convey the said hereditaments and premises in such manner as the said (*executors*) should direct.

Testatum.

3. NOW THIS INDENTURE WITNESSETH, that in order to complete the aforesaid purchase, and so far as relates to the said (*heir*), in obedience to the said hereinbefore-recited order of the said Court of Chancery, and in consideration of 2,000*l.* sterling this day paid by the said (*purchaser*) to the said (*executors*), by the direction of the said (*mortgagor*), testified by his being a party hereto, the receipt of which the said (*executors*) hereby acknowledge, and also that the same is in full satisfaction of all moneys owing to them upon the said hereinbefore-recited mortgage security, and therefrom do by these presents release and for ever discharge the said (*mortgagor*), and also the said (*purchaser*) respectively, and their

respective heirs, executors, administrators and assigns; and also in consideration of 3,000*l.* sterling, the residue of the said purchase-money, at the same time paid by the said (*purchaser*) to the said (*mortgagor*), the receipt and payment in manner aforesaid of which said two several sums of 2,000*l.* and 3,000*l.*, making altogether the sum of 5,000*l.*, the purchase-money of the said hereditaments and premises, the said (*mortgagor*) hereby acknowledges, and therefrom doth by these presents release and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns; and also in consideration of the sum of ten shillings, at the same time as aforesaid paid by the said (*purchaser*) to the said (*heir*), the receipt whereof is hereby acknowledged, the said (*heir*), (as such heir as aforesaid, by the direction of the said (*executors*), and with the concurrence of the said (*mortgagor*),) DOTH by these presents grant, the said (*executors*), as such executors as aforesaid, DO by these presents release, and the said (*mortgagor*) DOTH by these presents grant, release and confirm unto the said (*purchaser*), and his heirs, ALL, &c. [DESCRIBE *parcels, &c.;* HABENDUM *to dower uses, &c. declaration to bar dower, and covenants for title by vendor, ut ante,* No. I., *clauses* 5, 6, 7, *and* 8; AND *covenant from executors that they have done no act to incumber, as in* No. XII., *clause* 7.]

IN WITNESS, &c.

No. XX.

Conveyance by four of five co-heiresses, three of whom are married, one single, and the remaining one an infant, with a covenant that the latter shall convey when of age; a proportionate part of the purchase-money to be retained in the meantime by the purchaser.

1. Parties.
2. Recital of death of ancestor intestate, whereupon parcels descended upon his daughters as co-heiresses.
3. Of contract to purchase, and of inability of infant to concur on account of her minority.
4. Testatum.
5. Habendum.
6. Covenants for title.
7. That infant shall convey upon coming of age.
8. Covenant to acknowledge deed.
9. Covenant from purchaser to pay the remainder of the purchase-money, on infant's executing conveyance.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (A., *husband of first co-heiress*), of, &c., and B. his wife, of the first part, (C., *husband of second co-heiress*), of, &c., and D. his wife, of the second part, (E., *husband of third co-heiress*), of, &c., and F. his wife, of the third part, (*fourth co-heiress*), of, &c., spinster, of the fourth part, (*infant co-heiress*), of, &c., of the fifth part (which said B., the wife of the said A.; D., the wife of the said C.; F., the wife of the said E.; the said (*fourth co-heiress*) and (*infant*) are sole co-heiresses-at-law of R. S., late of, &c., esquire, deceased); (*purchaser*) of, &c., of the sixth part; and (*dower trustee*) of the seventh part.

Recital of death of ancestor intestate, whereupon parcels descended upon his daughters as co-heiresses.

2. WHEREAS the said R. S. being seised in fee of the hereditaments and premises hereinafter described, and intended to be hereby granted and released, died on or about the day of , intestate, leaving the said B., the wife of the said A.; D., the wife of the said C., and F., the wife of the said E., the said (*fourth co-heiress*) and the said (*infant*) his daughters and co-heiresses, him surviving, upon whom the said hereditaments then descended.

3. AND WHEREAS the said A., and B. his wife; C., and D. his wife; E., and F. his wife; and (*fourth co-heiress*) have contracted to sell the said hereditaments and premises, and the inheritance thereof, in fee-simple, free from incumbrances, to the said (*purchaser*), for the sum of 5,000*l.*, and inasmuch as the sale of one undivided fifth part of the said hereditaments, which is vested in the said (*infant*), cannot be now perfected by reason of her infancy, the said parties hereto of the first, second, third, and fourth parts, have undertaken that the said (*infant*) shall, within the space of one calendar month next after she shall attain the age of twenty-one years, well and effectually convey and assure the same fifth part to such uses as are hereinafter declared concerning the hereditaments and premises hereby granted; and it has been agreed that in the meantime the sum of 1,000*l.*, part of the said purchase-money, shall be retained by the said (*purchaser*) at interest, at the rate of 4*l.* for every 100*l.* by the year.

Of contract to purchase, and inability of infant to concur, on account of her minority.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and in consideration of 4,000*l.* sterling, this day paid by the said (*purchaser*) to the said A., and B. his wife; C., and D. his wife; E., and F. his wife, and (*fourth co-heiress*), the receipt of which said sum of 4,000*l.*, making, together with the said sum of 1,000*l.*, so as aforesaid agreed to be retained by the said (*purchaser*), the sum of 5,000*l.*, the purchase-money of the said hereditaments and premises, the said A., and B. his wife; C., and D. his wife; E., and F. his wife; and the said (*fourth co-heiress*) do hereby acknowledge, and do therefrom release the said (*purchaser*), his heirs, executors, administrators and assigns for ever; the said A., and B. his wife; C., and D. his wife; E., and F. his wife; and (*fourth co-heiress*) DO, and each and every of them DOTH, by these presents, grant, release and confirm unto the said (*purchaser*) and his heirs, ALL those four undivided fifth parts or shares of the said A., and B. his wife, in her right; C., and D. his wife, in her right; E., and F. his wife, in her right; and (*fourth co-heiress*) respectively, of and in ALL, &c. [HERE DESCRIBE *parcels, and* INSERT *general words as in Prec.* No. I., *clause* 5.] AND all the estate, right, title and interest, both legal and equitable, of them

Testatum.

the said A., and B. his wife; C., and D. his wife; E., and F. his wife; and (*fourth co-heiress*) respectively, of and in the said hereditaments and premises; AND all deeds, evidences and writings relating to the title of the said premises, in the custody of the said A., and B. his wife; C., and D. his wife; E., and F. his wife; and (*fourth co-heiress*), or either of them, or which they or either of them can procure without suit.

Habendum. 5. TO HAVE AND TO HOLD the said four undivided fifth parts or shares of and in the said , and all and singular other the hereditaments and premises hereinbefore described and hereby granted and released, with their appurtenances, unto the said (*purchaser*) and his heirs. [HERE INSERT *dower uses, &c., ut ante*, No. I., *clauses* 6 *and* 7.]

Covenants for title, &c. 6. AND the said parties hereto of the first, second, third and fourth parts, for themselves respectively, and their respective heirs, executors and administrators, and such of them as are husbands covenanting for the acts of their respective wives, as to the said four undivided fifth parts of the said hereditaments and premises, do hereby covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act or thing respectively done or permitted by them, the said parties hereto of the first, second, third or fourth part respectively, or by the said R. S., deceased, to the contrary), they, the said parties hereto of the first, second, third and fourth parts respectively, now have in themselves good right, by these presents, to grant the said four undivided fifth parts in the said hereditaments and premises to the uses and in manner aforesaid; AND also that (notwithstanding any such act or thing as aforesaid), the said hereditaments and premises so granted and released as aforesaid, shall be peaceably and quietly held and enjoyed accordingly, without let, suit, eviction, interruption or denial by the said parties hereto of the first, second, third and fourth parts, or any other person or persons rightfully claiming under or in trust for them, or the said R. S., deceased; AND that freely, clearly, and absolutely exonerated and indemnified by the said parties hereto of the first, second, third and fourth parts, their respective heirs, executors or administrators, from and against all, and all manner of former estates, rights, titles, liens, charges and incumbrances

whatsoever respectively created by the said parties hereto of the first, second, third and fourth parts, or any other person or persons whomsoever rightfully claiming under or in trust for them, or the said R. S., deceased. AND FURTHER, that the said parties hereto of the first, second, third and fourth parts respectively, and all persons rightfully claiming any estate or interest, legal or equitable, in the said hereditaments and premises hereby granted, under or in trust for them or the said R. S., deceased, will, from time to time, and at all times, at the request and costs of the said (*purchaser*), his appointees, heirs, or assigns, enter into and execute all such further assurances, for the more perfectly or satisfactorily assuring the said hereditaments and premises hereby granted and released, with their appurtenances, to the uses aforesaid, according to the true intent and meaning of these presents, as by the said (*purchaser*), his appointees, heirs or assigns, or his or their counsel in the law, shall be required, and as shall be tendered to be done and executed.

That infant shall convey on coming of age.

7. AND MOREOVER, that the said (*infant*) shall, within one calendar month next after she shall attain her age of twenty-one years, and with the concurrence of her husband, if at that time she shall be married, or in case of her death in the meantime, that her heir or heirs (and her husband, tenant by the curtesy, should she leave any such), within one calendar month next after such her decease, or if such heir or heirs shall be under any legal disability, within one calendar month after such disability shall be removed, and also any person or persons claiming through or under the said (*infant*) or her heirs, shall, at the request and costs of the said (*purchaser*), his appointees, heirs or assigns, enter into, execute and perfect all such conveyances and assurances as the said (*purchaser*), his appointees, heirs or assigns, or his or their counsel in the law, shall require, and thereby effectually convey and assure ALL that one undivided fifth part now vested in her the said (*infant*), of and in the said hereditaments and premises, unto the said (*purchaser*) and his heirs, to such and the same uses, upon such and the same trusts, and for such and the same ends, intents and purposes, as are hereinbefore declared concerning the said four undivided fifth parts in the same hereditaments and premises hereby granted and released, or such of them as shall be then subsisting and capable

of taking effect, free from all incumbrances whatsoever made or created by the said (*infant*), or any other person or persons whomsoever claiming through or under her; and also enter into such qualified covenants for title, quiet enjoyment, freedom from incumbrances, and for further assurance, as are usual in like cases; and that in the meantime it shall be lawful for the person or persons for the time being entitled under the uses hereinbefore declared, peaceably and quietly to hold and enjoy the said undivided fifth part or share of the said hereditaments and premises, without let, suit, eviction, interruption, or denial by the said (*infant*), or any other person or persons rightfully claiming through or under her.

Covenant to acknowledge deed.

8. And the said A., C., and E. do hereby for themselves respectively, and for their respective heirs, executors and administrators, covenant with the said (*purchaser*) and his heirs, that these presents shall forthwith, at the proper costs of them, the said A., C., and D., be respectively acknowledged by the said B., the wife of the said A.; the said D., the wife of the said C.; and the said F., the wife of the said E., they hereby respectively consenting, and be otherwise perfected with the solemnities prescribed by law for rendering the deeds of married women effectual to convey their estates and interests in real property.

Covenant from purchaser to pay the remaining purchase-money, on infant's executing conveyance.

9. And this Indenture also witnesseth, that in consideration of the premises, the said (*purchaser*) doth hereby for himself, his heirs, executors and administrators, covenant with the said parties hereto, of the first, second, third and fourth parts, and with their respective executors, administrators and assigns, that he the said (*purchaser*), his heirs, executors or administrators, will, on receiving a perfect and effectual conveyance of the said undivided fifth part of the said hereditaments and premises so covenanted to be conveyed and assured to him by the said (*infant*), or parties claiming under her as aforesaid, pay unto the said (*infant*), or such parties claiming under her as aforesaid, the said sum of 1,000*l.*, so agreed to be retained by the said (*purchaser*) out of the entire purchase-money or sum of 5,000*l.*, together with interest for the same at the rate of 4*l.* for every 100*l.* by the year, in full satisfaction and discharge of his said purchase-money.

In witness, &c.

No. XXI.

Conveyance by trustees under a power of sale contained in a will, the heir and legatees concurring.

1. Parties.
2. Recital that testator had devised to trustees upon trust to sell.
3. Of testator's death and probate of his will.
4. Of contract to purchase.
5. Testatum.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*trustees*), of, &c., of the first part, (*heir*), of, &c., of the second part, (*legatees*), of, &c., of the third part, (*purchaser*), of, &c., of the fourth part, and (*dower trustee*), of, &c., of the fifth part. Parties.

2. WHEREAS (*testator*), late of, &c., esquire, deceased, by his last will, executed and attested as by law is required, dated the day of , 18 , devised unto the said (*trustees*), their heirs and assigns, amongst other lands and hereditaments, the hereditaments and premises hereinafter described, and which are also intended to be hereby granted and released; TO HOLD the same, with their appurtenances, unto and to the use of the said (*trustees*), their heirs and assigns, for ever, UPON TRUST to sell and dispose of the same by public auction or private contract, and out of the proceeds of such sale to pay all the said testator's debts, funeral expenses and certain legacies bequeathed to the said (*legatees.*) And the said (*trustees*), and all other trustees acting in the execution of the now reciting will, were empowered to give receipts to any purchaser or purchasers, which it was thereby declared should exonerate such purchaser or purchasers from all responsibility with respect to the application of the purchase-moneys therein expressed to be received; and subject to the aforesaid trusts, and as to such parts of the said premises as should not be sold for the purposes aforesaid, UPON TRUST, and for the sole benefit of the said (*heir*); his heirs and assigns for ever; and the said (*testator*) also appointed the said (*trustees*) joint executors in trust of his said will. Recital that testator had devised to trustees upon trust to sell.

Of testator's death and probate of his will.

3. AND WHEREAS the said (*testator*) died on the day of , 185 , without having altered or revoked his said will, which was duly proved by the said (*trustees*), the executors therein named, on the day of following, in the Prerogative Court of the Archbishop of Canterbury.

Of contract to purchase.

4. AND WHEREAS the said (*purchaser*) has contracted with the said (*trustees*) for the purchase of the said hereditaments and premises hereinafter described, and the inheritance thereof, free from incumbrances, for the sum of 576*l.*

Testatum.

5. NOW THIS INDENTURE WITNESSETH, that in order to complete the said contract, and in consideration of the sum of 576*l.* sterling, this day paid by the said (*purchaser*) to the said (*trustees*), the receipt of which the said (*trustees*) hereby acknowledge, and therefrom do by these presents release the said (*purchaser*), his heirs, executors, administrators and assigns for ever, THEY the said (*trustees*), as such trustees as aforesaid, DO by these presents grant, release and convey; the said (*legatees*) DO by these presents remise, release and quit claim; and the said (*heir*) DOTH by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels*, INSERT *general words, all-estate clause, and all-deeds clause*; ALSO COVENANTS *for title, &c., from heir, ut ante*, No. I., *clauses* 5 *to* 11 *inclusive*, pp. ii., iv.; *and covenant from trustees that they have done no act to incumber, ut ante*, No. XVIII., *clause* 10, p. liii.]

No. XXII.

Conveyance by tenant in tail with consent of protector, for the purpose of barring an entail prior to a conveyance.

1. Parties.
2. Testatum by which tenant in tail, with consent of protector, conveys, &c.
3. Habendum to releasee, to uses, &c.

1. THIS INDENTURE, made the day of Parties.
, A.D. 185 , BETWEEN *(tenant in tail)*, of, &c., of the first part, *(protector)*, of, &c., of the second part, and *(releasee to uses)*, of, &c., of the third part:

2. WITNESSETH, that, for the purpose of destroying the estate tail of the said *(tenant in tail)* in the hereditaments and premises hereinafter described, and intended to be hereby granted and released, and all estates, rights, titles, interests and powers to take effect after or in defeasance of such estate tail, and to limit the same to the uses hereinafter declared, the said *(tenant in tail)*, with the consent of the said *(protector)*, testified by his being a party hereto, DOTH by these presents grant and confirm unto the said *(releasee)*, and his heirs, ALL, &c. [HERE DESCRIBE *parcels*]; and all and singular other the premises comprised in and settled by a certain indenture of release, dated, &c., and made, &c. [HERE SET OUT *the deed of settlement*], and all rights, members and appurtenances to the said hereditaments belonging, and all the estate, right, title and interest, both legal and equitable, of the said *(tenant in tail)* therein: Testatum, by which the tenant in tail, with consent of protector, conveys, &c.

3. TO HAVE AND TO HOLD the said and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said *(releasee)* and his heirs, freed and discharged from all estates tail of the said *(tenant in tail)*, and all estates, rights, titles, interests and powers, to take effect after, or in defeasance of, such estate tail, to the uses, upon the trusts, and for the ends, intents and purposes hereinafter declared, (that is to say,) to such uses [HERE CONTINUE *dower uses, at ante*, No. VI., clause 6, p. xix.] Habendum.

IN WITNESS, &c.

No. XXIII.

Consent of protector by a distinct deed, enabling the tenant in tail to bar the estate tail and remainders.

1. Recital of settlement creating the entail.
2. That tenant in tail and protector are desirous of barring entail.
3. Protector declares consent.

Recital of settlement.

1. To ALL to whom these presents shall come, I, (*protector*), of, &c., send greeting. WHEREAS by indentures of lease and release, bearing date respectively the and days of , 185 , the indenture of release being made between (*protector, father of tenant in tail*), of the first part; (*mother of tenant in tail*), of the second part; and (*trustees to preserve contingent remainders*), of the third part, being a settlement made previously to and in contemplation of a marriage between the said (*protector*) and (*mother*), which was afterwards duly solemnized, the hereditaments and premises therein described were limited, after the solemnization of the said intended marriage, to the use of the said (*protector*) and his assigns for life, with remainder to the use of the said (*trustees*) and their heirs, during the life of the said (*protector*), upon trust to preserve contingent remainders, and after his decease to the use of the first and every other son and sons of the said intended marriage successively, in tail mail general, with divers limitations over.

That tenant in tail and protector are desirous of barring entail.

2. AND WHEREAS (*tenant in tail*) is the eldest son and heir-apparent of the said (*protector*), and the said (*protector*) is desirous of enabling him to dispose of the said hereditaments and premises, and to bar his estate tail therein, and all estates, rights, titles, interests and powers to take effect after or in defeasance of such estate tail:

Protector declares his consent.

3. NOW KNOW YE, that for effectuating the purposes aforesaid, and in exercise of the power as such protector, of and under the said herein-before-

recited settlement, I, the said (*protector*), DO by these presents consent to all and every disposition which the said (*tenant in tail*) shall from time to time, or at any time hereafter, make of the said hereditaments and premises comprised in the said hereinbefore-recited settlement, for or upon any uses, trusts, ends, intents, or purposes whatsoever.

IN WITNESS, &c.

No. XXIV.

Conveyance by father, tenant for life, and his son, tenant in tail remainder, to a purchaser, to uses to bar dower.

1. Parties.
2. Recital of contract.
3. Testatum.
4. Covenant from vendors that they have good right to convey.
5. For quiet enjoyment.
6. Freedom from incumbrances.
7. For further assurance.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*tenant for life*), of, &c., of the first part; (*tenant in tail*), of, &c., of the second part; (*purchaser*), of, &c., of the third part; and (*dower trustee*), of, &c., of the fourth part. [RECITE *settlement, as in clause* 1, *last precedent.*]

Recital of contract.

2. AND WHEREAS the said (*purchaser*) has contracted with the said (*tenant for life*) and (*tenant in tail*) for the purchase of the hereditaments and premises hereinafter described, and intended to be hereby granted and released for an absolute estate of inheritance in fee-simple in possession, free from incumbrances, for the price of 1,000*l.*

Testatum.

3. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and for the purpose of defeating and destroying the estate tail of the said (*tenant in tail*) in the said hereditaments, and all estates, rights, titles, interests and powers, to take effect after or in defeasance of such estate tail, and also in consideration of the sum of 1,000*l.* sterling, paid by the said (*purchaser*) to the said (*tenant for life*) and (*tenant in tail*) on the execution hereof, the receipt of which the said (*tenant for life*) and *tenant in tail*) hereby acknowledge, and therefrom do and each of them doth by these presents release the said (*purchaser*), his heirs, executors, administrators, and assigns, for ever, the said (*tenant for life*) DOTH by these presents grant and release, and the said (*tenant in tail*), (with the consent and concurrence of the said (*tenant for life*), testified by his being a party hereto), DOTH by these presents release and confirm unto the said (*purchaser*) and his heirs, ALL, &c.

[HERE DESCRIBE *parcels*, INSERT *general words, all-estate clause, and all-deeds clause.* [HABENDUM *to dower uses, ut ante*, No. I., *clauses* 5, 6, 7, pp. ii., iii.]

Covenant from vendors that they have good right to convey.

4. AND the said (*tenant for life*) and (*tenant in tail*) do hereby for themselves, their heirs, executors and administrators, jointly and severally covenant, promise and agree with and to the said (*purchaser*), his heirs and assigns, that (notwithstanding any act or thing done or permitted by them to the contrary), they, the said (*tenant for life*) and (*tenant in tail*), or one of them, now have or hath in themselves, or himself, good right, full power, and lawful and absolute authority by these presents to grant and release the said hereditaments and premises, hereby granted and released, with their appurtenances to the uses and manner aforesaid.

For quiet enjoyment.

5. AND ALSO that (notwithstanding any such act or or things as aforesaid) the same hereditaments and premises shall or may be held and enjoyed accordingly, without let, suit, eviction, ejection, interruption, molestation, or disturbance, of or by the said (*tenant for life*) or (*tenant in tail*), or either of them, or any other person whomsoever rightfully claiming, or to claim by, from, through, under, or in trust for them or either of them, or through or under the said hereinbefore recited indenture of settlement.

Freedom from incumbrances.

6. AND that freely, clearly, and absolutely indemnified by the said (*tenant for life*) and (*tenant in tail*), and each of them, their, and each of their heirs, executors or administrators, from and against all former and other estates, rights, titles, liens, charges and incumbrances whatsoever made or created by the said (*tenant for life*) or (*tenant in tail*), or either of them, or any other person or persons whomsoever, rightfully claiming by, from, through, under, or in trust for them, or either of them, or by or through their, or either of their acts, deeds, defaults, privity, or procurement.

For further assurance.

7. AND MOREOVER that the said (*tenant for life*) and (*tenant in tail*), and all persons whomsoever rightfully claiming any estate or interest, legal or equitable, in the said hereditaments and premises hereby granted and released, or any part thereof, under or in trust for them, or either of them, shall and will, from time to time, and all times hereafter, at the request and costs of the said (*purchaser*), his appointees, heirs or

assigns make, do, acknowledge, enter into, execute and perfect, or cause or procure to be made, done, acknowledged, entered into, executed and perfected, all such further and other lawful and reasonable acts, deeds, devices, conveyances and assurances in the law whatsoever, for the further, better, more perfectly or satisfactorily conveying, assuring, granting, releasing and confirming the said hereditaments and premises hereby granted and released, with their appurtenances, to the uses and in manner aforesaid, according to the true intent and meaning of these presents, as the said (*purchaser*), his appointees, heirs or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed.

In witness, &c.

No. XXV.

Conveyance by heir in tail without the consent of the protector, with a covenant to perfect the title at a future period.

1. Parties.
2. Recital of will creating the entail.
3. Of testator's death, whereby protector became seised for life, with remainder to his first and other sons successively in tail.
4. That vendor is first tenant in tail in remainder expectant on protector's life estate.
5. Of contract to sell.
6. Testatum.
7. Habendum to purchaser in fee.
8. Covenant from tenant in tail that he is entitled to premises as tenant in tail in remainder.
9. That he has good right to convey.
10. For quiet enjoyment and freedom from incumbrances.
11. For further assurance.
12. Covenant to perfect title at a future period.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*tenant in tail*), of, &c., of the one part, and (*purchaser*), of, &c., of the other part. Parties.

2. WHEREAS J. S., late of, &c., esquire, deceased, by his last will, in writing, bearing date on or about the day of , executed and attested as by law is required, gave and devised the hereditaments and premises hereinafter described to the use of the said (*protector*) and his assigns for the term of his natural life, without impeachment of waste, with remainder to the use of his first and other sons in tail male general, with divers remainders over. Recital of will creating the entail.

3. AND WHEREAS the said (*testator*) died on or about the day of , without having altered or revoked his said will, which was duly proved by the executors therein named in the Prerogative Court of the Archbishop of Canterbury, on the day of , 184 , whereby the said (*protector*) became seised of the said hereditaments and premises for life, with remainder to his first and other sons successively in tail male general, with the limitations over as aforesaid. Of testator's death, whereby protector became seised for life, with remainder to his first and other sons successively in tail.

4. AND WHEREAS the said (*tenant in tail*) is the first son of the said (*protector*), and attained his full age of twenty-one years on the day of , 184 . That vendor is first tenant in tail in remainder expectant on protector's life estate.

Of contract to sell.

5. AND WHEREAS the said (*tenant in tail*) has contracted with the said (*purchaser*) for the sale of the remainder, in fee-simple, immediately expectant on the decease of the said (*protector*), in the said hereditaments and premises, free from incumbrances, at the price of 1,500*l.*, but the said (*tenant in tail*) being unable to obtain the consent of the said (*protector*), as such protector of the settlement under the said hereinbefore recited will, to the disposition of the said hereditaments and premises, the said (*purchaser*) has agreed to accept such a conveyance as the said (*tenant in tail*) is empowered now to make without such consent, upon his entering into the covenant hereinafter contained for perfecting the title of the said (*purchaser*) to the said hereditaments and premises in manner hereinafter mentioned.

Testatum.

6. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of 1,500*l.* sterling, paid by the said (*purchaser*) to the said (*tenant in tail*) on the execution hereof, the receipt of which the said (*tenant in tail*) hereby acknowledges, and therefrom doth by these presents release the said (*purchaser*), his heirs, executors, administrators and assigns for ever; HE, the said (*tenant in tail*), for the purpose as well of defeating and destroying his estate tail in the said hereditaments and premises, and to pass a base fee in remainder immediately expectant on the decease of the said (*protector*), DOTH by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels and* INSERT *general words, all-estate clause, and all-deeds clause, as in Prec.* No. I., *clause* 5.]

Habendum.

7. TO HAVE AND TO HOLD the said , and all and singular other the premises hereinbefore described, and hereby granted and released, with their appurtenances, freed and absolutely discharged of the estate tail of the said (*tenant in tail*); but subject to the estate for life of the said (*protector*), and to such estates, rights, titles, interests and powers, as by the said hereinbefore recited will are limited to take effect after the determination, or in defeasance of the estate tail of the said (*tenant in tail*), unto the said (*purchaser*) and his heirs, TO THE USE of the said (*purchaser*), his heirs and assigns for ever.

Covenant

8. AND the said (*tenant in tail*) doth hereby for

himself, his heirs, executors and administrators, covenant with the said (*purchaser*) and his heirs, that (notwithstanding any act or thing done or permitted by the said (*tenant in tail*), or any person rightfully claiming through or under him, or the said (*testator*), deceased, to the contrary), he the said (*tenant in tail*) is now rightfully entitled to the said hereditaments and premises hereby granted and released, with their appurtenances, for an estate of inheritance, in remainder expectant as aforesaid, with such remainders over as aforesaid. from tenant in tail that he is entitled to premises as tenant in tail in remainder.

9. Also that (notwithstanding any such act or thing as aforesaid) the said (*tenant in tail*) now hath in himself good right, by these presents, to grant and release the said hereditaments and premises unto and to the use of thesaid (*purchaser*), his heirs and assigns, in manner aforesaid. That he has good right to convey.

10. And also, that the same hereditaments and premises shall be peaceably and quietly held and enjoyed accordingly, without let, suit, eviction, ejection, interruption, or denial by the said (*purchaser*), or any other person or persons rightfully claiming through or under him, or the said (*testator*), deceased (except as appears by these presents), and that freely, clearly and absolutely exonerated and indemnified by the said (*tenant in tail*), his heirs, executors, or administrators from all former and other estates, rights, titles, liens, charges and incumbrances made, created or suffered by the said (*tenant in tail*), or any other person or persons whomsoever rightfully claiming through or under him or the said (*testator*), deceased (except as appears by these presents.) For quiet enjoyment and freedom from incumbrances.

11. And further, that the said (*tenant in tail*), and all persons rightfully claiming any estate or interest, legal or equitable, in the said hereditaments and premises, through or under him or the said (*testator*), deceased (except claimants in respect of the estates, rights, titles, interests and powers to take effect after the determination or in defeasance of the estate tail of the said (*tenant in tail*), and subject to which the said hereditaments and premises are so granted and released as aforesaid,) will, from time to time, and at all times hereafter, at the request and costs of the said (*purchaser*), his heirs or assigns, enter into, execute, and perfect all such further acts, deeds, conveyances, and assurances whatsoever for For further assurance.

the further, better, or more perfectly, or satisfactorily granting, releasing, assuring and confirming the said hereditaments and premises unto and to the use of the said (*purchaser*), his heirs and assigns, according to the true intent and meaning of these presents, as the said (*purchaser*), his heirs or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed.

Covenant to perfect title at a future period.

12. And moreover, that the said (*tenant in tail*), or his issue in tail, when enabled or competent so to do, will, at the request of the said (*purchaser*), but at the costs of the said (*tenant in tail*), his executors or administrator, enter into, execute, and perfect all such acts, deeds, conveyances and assurances for effectually barring, defeating, and destroying all estates, rights, titles, interests, and powers to take effect after the determination or in defeasance of the estate tail of the said (*tenant in tail*), and for perfecting, assuring and confirming the title of the said (*purchaser*), his heirs and assigns, to the inheritance in fee-simple of the same hereditaments and premises, either in possession or in remainder immediately expectant on the decease of the said (*protector*) (as the case may be), as the said (*purchaser*), his heirs or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed.

In witness, &c.

No. XXVI.

Further assurance in pursuance of the covenant contained in the last precedent.

1. Parties.
2. Recital of conveyance of base fee by tenant in tail.
3. Recital of death of protector.
4. Of consent of tenant in tail to perfect assurance.
5. Testatum, by which tenant in tail perfects title.
6. Habendum to purchaser, discharged of all estates tail, &c.
7. Covenant from tenant in tail, that he has done no act to incumber

1. THIS INDENTURE, made the day of A. D. 185 , BETWEEN (*tenant in tail in last conveyance*) of, &c., of the one part, and (*purchaser*) of, &c., of the other part. Parties.

2. WHEREAS by indenture dated on or about the day of , 185 , made between the said (*tenant in tail*) of the one part, and the said (*purchaser*) of the other part, and enrolled on the day of , in the same year, in the High Court of Chancery, AFTER RECITING that (*protector*) of, &c., was tenant for life of the hereditaments and premises therein and hereinafter described, and intended to be hereby confirmed, and that the said (*tenant in tail*) was tenant in tail in remainder immediately expectant on such life estate, with divers remainders over; AND ALSO RECITING that the said (*tenant in tail*) had contracted with the said (*purchaser*) for the sale to him of the remainder in fee simple, immediately expectant on the decease of the said (*protector*), for the sum of 1,500*l.*, and that the said (*tenant in tail*), being then unable to obtain the consent of the said (*protector*) to the conveyance of the said remainder in fee, the said (*purchaser*) had agreed to accept a conveyance thereof from the said (*tenant in tail*) without such consent, on his entering into a covenant, that he, or his issue in tail, would perfect the title of the said (*purchaser*) in manner thereinafter mentioned: IT IS WITNESSED, that in pursuance of the said agreement, and in consideration of the sum of 1,500*l.* then paid by the said (*purchaser*) to the said (*tenant in tail*), the said (*tenant* Recital of conveyance of base fee by tenant in tail.

in tail), for the purpose as well of defeating and destroying his estate tail in the said hereditaments and premises, and to pass a base fee in remainder, immediately expectant on the decease of the said (*protector*), did grant and release unto the said (*purchaser*) and his heirs, ALL, &c. [DESCRIBE *parcels*], with their appurtenances, TO HOLD the same unto and to the use of the said (*purchaser*), his heirs and assigns, for ever, subject to the estate for life of the said (*protector*), and the estates, rights, titles, interests and powers, to take effect after the determination, or in defeasance of such estate tail of the said (*tenant in tail.*) AND by the now reciting indenture, the said (*tenant in tail*), did thereby covenant with the said (*purchaser*), that he, the said (*tenant in tail*), or his issue in tail, would, when enabled or competent so to do, at the request of the said (*purchaser*), his heirs or assigns, but at the cost of the said (*tenant in tail*), his executors or administrators, enter into, execute, and perfect all such acts, deeds, conveyances, and assurances for effectually barring, defeating, and destroying all estates, rights, titles, interests, and powers to take effect after the determination, or in defeasance of the estate tail of the said (*tenant in tail*), and for perfecting, assuring, and confirming the title of the said (*purchaser*), his heirs and assigns, to the inheritance in fee simple of the same hereditaments and premises, either in possession, or in remainder immediately expectant on the decease of the said (*protector*), as the said (*purchaser*), his heirs or assigns, should require.

Of death of protector.

3. AND WHEREAS the said (*protector*) died on or about the day of .

Of consent of tenant in tail to perfect assurance.

4. AND WHEREAS the said (*tenant in tail*), at the request of the said (*purchaser*), hath consented to a specific performance of his said hereinbefore recited covenant, by executing this present assurance in manner hereinafter contained.

Testatum, by which tenant in tail perfects title.

5. NOW THIS INDENTURE WITNESSETH, that in performance of the said hereinbefore-recited covenant, and in consideration of the sum of 5*s.* sterling, paid by the said (*purchaser*) to the said (*tenant in tail*), on the execution hereof, the receipt of which is hereby acknowledged, and for the purpose of barring, defeating, and destroying all estates, rights, titles, interests, and powers to take effect after the determination of the base fee into which the said estate tail

of the said (*tenant in tail*) was converted by the said hereinbefore-recited indenture, and in order to perfect, assure and confirm the title of the said (*purchaser*) to the inheritance in fee simple in possession of the said hereditaments and premises, the said (*tenant in tail*) DOTH by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, ALL and singular the hereditaments and premises hereinbefore described, and so as aforesaid comprised in, and granted and released by the said hereinbefore recited indenture of the day of , 185 , and all the estate, right, title and interest, both legal and equitable, of him the said (*tenant in tail*) therein.

Habendum to purchaser, discharged of all estates tail, &c.

6. TO HAVE AND TO HOLD, the said and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*purchaser*) and his heirs, TO THE USE of the said (*purchaser*), his heirs and assigns, for ever, freed and absolutely discharged of and from all estates, rights, titles, interests and powers, to take effect after the determination, or in defeasance of the same estate tail, or base fee, into which the same was so converted as aforesaid.

Covenant from tenant in tail that he has done no act to incumber.

7. AND the said (*tenant in tail*) doth hereby, for himself, his heirs, executors and administrators, covenant with the said (*purchaser*) and his heirs, that he the said (*tenant in tail*), hath not done or permitted, or willingly or knowingly suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, the said hereditaments and premises, hereby granted and confirmed, or any part of the same, can be incumbered, or prejudicially affected, in any measure howsoever.

IN WITNESS, &c.

No. XXVII.

Conveyance by tenant in tail in possession to a purchaser in fee, his wife concurring to bar her dower.

1. Parties.
2. Recital of death of tenant of preceding particular estate.
3. Recital of contract.
4. Testatum, by which tenant in tail conveys, and his wife releases her claim.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*tenant in tail*) and (*Christian name*), his wife, of the one part, and (*purchaser*) of the other part. [RECITE *will of testator, his death and probate, and that tenant in tail is the first tenant in tail, as in Prec.* No. XXV., *clauses* 2, 3, 4.]

Recital of death of tenant of preceding particular estate.

2. AND WHEREAS the said (*tenant for life*) died on the day of , 18 , whereupon the said (*tenant in tail*) became tenant in tail in possession of the said hereditaments and premises, by virtue of the limitations contained in the said hereinbefore-recited will.

Recital of contract.

3. AND WHEREAS the said (*purchaser*) has contracted with the said (*tenant in tail*) for the purchase of the said hereditaments and premises, and the inheritance thereof in fee-simple in possession, free from incumbrances, for the sum of £ .

Testatum, by which tenant in tail conveys, and his wife releases her claim.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of £ sterling, this day paid by the said (*purchaser*) to the said (*tenant in tail*), the receipt of which the said (*tenant in tail*) hereby acknowleges, and therefrom DOTH by these presents release the said (*purchaser*), his heirs, executors, administrators and assigns for ever, and for the purpose of barring, defeating and destroying the estate tail of the said (*tenant in tail*) in the said hereditaments and premises, by virtue of the said hereinbefore recited will, and all estates, rights, titles, interests and powers to take effect after the determination, or in defeasance of such estate tail; HE the

said (*tenant in tail*) DOTH by these presents grant, release and confirm, and the said (*Christian name*), his wife, and with his privity, DOTH by these presents remise, release and quit claim unto the said (*purchaser*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels*, INSERT *general words, and all-estate clause, as in* No. I., *clause* 5; HABENDUM, *as in* No. XXII., *clause* 3; COVENANTS *for title, as in* No. I., *clause* 8; *and covenant to acknowledge deed, as in* No. VII., *clause* 7.]

IN WITNESS, &c.

No. XXVIII.

Grant for the purpose of effecting an exchange, where consideration money is paid for owelty of exchange.

1. Parties.
2. Recital of conveyance of property intended to be given in exchange.
3. Recital of conveyance of premises intended to be taken in exchange.
4. Recital of contract to exchange.
5. Testatum whereby premises are granted in exchange.
6. Habendum in exchange in fee.

Parties.

1. THIS INDENTURE, made the day of , 185 , BETWEEN (*grantor*) of, &c., of the one part, and (*grantee*) of, &c., of the other part.

Recital of conveyance of property intended to be given in exchange.

2. WHEREAS, by indentures of lease and release bearing date respectively on or about the and days of , 1838, the indenture of release being made between (A. B.) of the one part, and of the said (*grantor*) of the other part, the hereditaments and premises hereinafter described, and intended to be granted in exchange for the hereditaments and premises secondly hereinbefore described, were conveyed and assured unto and to the use of the said (*grantor*), his heirs and assigns for ever.

Recital of conveyance of premises intended to be taken in exchange.

3. AND WHEREAS, by indenture of appointment bearing date on or about the day of , 1841, and made between (R. S.), therein described, of the one part, and the said (*grantee*) of the other part, the hereditaments and premises secondly hereinafter described, and intended to be granted in exchange for the hereditaments and premises firstly hereinafter described, were, by an indenture bearing even date herewith, appointed and assured unto and to the use of the said (*grantee*), his heirs and assigns for ever.

Recital of contract to exchange.

4. AND WHEREAS the said (*grantor*) and (*grantee*) have agreed to exchange their respective hereditaments and premises; and as it appears that the hereditaments of the said (*grantor*) are of greater value

than those of the said (*grantee*), the said (*grantee*) hath agreed to pay the said (*grantor*) the sum of 200*l.* for owelty or equality of exchange.

Testatum whereby premises are granted in exchange.

5. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and for the purpose of effecting the said exchange, in consideration of the grant by way of exchange made by the said (*grantee*) to the said (*grantor*), by the said indenture bearing even date with these presents, and also in consideration of the sum of 200*l.* sterling, for owelty of exchange, paid by the said (*grantee*) to the said (*grantor*) on the execution hereof, the receipt of which the said (*grantor*) hereby acknowledges, and therefrom DOTH by these presents release the said (*grantee*), his heirs, executors, administrators and assigns for ever; HE the said (*grantor*) DOTH by these presents grant, release and confirm unto the said (*grantee*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels and* INSERT *general words, all-estate clause, and all-deeds clause, as in Prec.* No. I., *clause* 5.]

Habendum in exchange in fee.

6. TO HAVE AND TO HOLD the said and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with the appurtenances, unto the said (*grantee*) and his heirs, TO THE USE of the said (*grantee*), his heirs and assigns for ever, IN LIEU of and in EXCHANGE FOR ALL, &c. [HERE DESCRIBE *parcels given in exchange*], being the lands comprised in and conveyed and assured by the said (*grantee*) to the said (*grantor*), by the said indenture bearing even date with these presents, in exchange for the said hereditaments and premises hereby granted. (*a*) [INSERT *covenants for title, &c., as in* No. I., *clause* 7, *et seq.*]

(*a*) It was formerly a practice to annex a clause declaring that no mutual warranty of right of action incidental to an exchange at common law should attach thereon, but this is now rendered unnecessary by the recent statute 8 & 9 Vict. c. 106, s. 4.

No. XXIX.

Assignment of leasehold premises held for a term of 99 *years absolute to a purchaser, with usual covenants.*

1. Parties.
2. Recital of original demise.
3. Of mesne assignments.
4. Of contract to purchase.
5. Testatum.
6. Habendum for residue of term.
7. Covenant for title from vendor that lease is a valid lease, and that vendor has good right to assign.
8. That all rents have been paid and covenants performed.
9. That, subject to rents and covenants, purchaser shall quietly enjoy, free from incumbrances.
10. For further assurance.
11. Covenant from purchaser to indemnify vendor from covenants contained in the lease.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*assignor*) of, &c., of the one part, and (*assignee*) of, &c., of the other part.

Recital of original demise.

2. WHEREAS, by indenture bearing date on or about the day of , 1799, and made between (*lessor*) of the one part, and (*lessee*) of the other part, the leasehold messuage or tenement, lands and premises, hereinafter described and intended to be hereby assigned, were, for the considerations therein mentioned, demised unto the said (*lessee*), his executors, administrators and assigns, for the term of ninety-nine years thence next ensuing, at the yearly rent of 10*l.*, payable half-yearly as therein mentioned; and subject to the performance of certain covenants in the now reciting indenture of lease contained.

Of mesne assignments.

3. AND WHEREAS, by virtue of divers mesne assignments, wills, and other acts and assurances in the law, and ultimately by indenture bearing date on or about the day of , 1835, and made between (A. B.) of the one part, and the said (*assignor*) of the other part, all and singular the premises comprised in and demised by the said hereinbefore firstly-recited indenture, were assigned unto, and are now vested in the said (*assignor*), for all the unexpired residue of the said term of ninety-nine years.

Of contract to purchase.

4. AND WHEREAS the said (*assignee*) has contracted with the said (*assignor*) for the purchase of the said

messuage or tenement, lands and premises, for the residue of the said term of ninety-nine years therein, for the price of 750*l.*

Testatum.

5. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of 750*l.* sterling, this day paid by the said (*assignee*) to the said (*assignor*), the receipt of which the said (*assignor*) hereby acknowledges, and therefrom doth release the said (*assignee*), his heirs, executors, administrators and assigns, HE the said (*assignor*) DOTH by these presents assign unto the said (*assignee*), his executors, administrators and assigns, ALL, &c. [HERE DESCRIBE *the parcels; and if they have undergone any change since they were originally demised, add*], [all which said premises were comprised in and demised by the said hereinbefore recited indenture of the day of , 1799, and were therein described as ALL] [HERE DESCRIBE *parcels, as described in the original lease*], AND all rights, members, and appurtenances to the said premises belonging, and all the estate, right, title, and interest, both legal and equitable of him, the said (*assignor*) therein, together with the said indenture of lease, and all other deeds and writings relating to the title of the said premises, in the possession of the said (*assignor*), or which he can obtain without suit.

Habendum for residue of term.

6. TO HAVE AND TO HOLD the said messuage or tenement, fields or closes of land, and all and singular other the premises hereby assigned, with their appurtenances, unto the said (*assignee*), his executors, administrators and assigns, henceforth, for all the residue of the said term of ninety-nine years, and for all other the estate, term, and interest of the said (*assignor*) therein; *subject*, nevertheless, to the payment of the rent, and observance and performance of the covenants, conditions and agreements in and by the said hereinbefore recited indenture of lease reserved and contained, and which, on the lessee's part, ought to be paid, observed and performed.

Covenants for title from vendor that lease is a valid lease.

7. AND the said (*assignor*) DOTH hereby for himself, his heirs, executors and administrators, covenant with the said (*assignee*), his executors, administrators and assigns, that (notwithstanding any act done or permitted by him the said (*assignor*) to the contrary), the said hereinbefore-recited indenture of lease of the day of , is a good and subsisting

lease for the premises thereby demised, and is still in force for all the unexpired residue of the said term of ninety-nine years thereby granted; ALSO that (notwithstanding any such act as aforesaid), the said (*assignor*) now hath in himself good right to assign the said leasehold premises in manner aforesaid, according to the true intent and meaning of these presents.

That all rents have been paid and covenants performed.

8. AND ALSO that the yearly rents, covenants, conditions and agreements reserved and contained in the said hereinbefore recited indenture of lease, on the part of the lessee to be paid, observed and performed, have been paid, observed and performed accordingly, up to the day of the date hereof.

That, subject to rents and covenants, purchaser shall quietly enjoy, free from incumbrances.

9. AND FURTHER, that, subject to the payment of the rent and observance and performance of the covenants, conditions and agreements reserved and contained in and by the said hereinbefore-recited indenture of lease, it shall be lawful for the said (*assignee*), his executors, administrators and assigns, peaceably and quietly to enter upon, hold and enjoy the said hereby assigned premises, for all the residue of the said term of ninety-nine years, without let, suit, eviction, molestation or disturbance, of or by the said (*assignor*), or any other person or persons whomsoever rightfully claiming through or under him, AND THAT freely, clearly and absolutely exonerated by the said (*assignor*), his executors or administrators, from all titles, liens, charges and incumbrances whatsoever made or occasioned by the said (*assignor*), or any other person or persons rightfully claiming through or under him.

For further assurance.

10. AND MOREOVER, that the said (*assignor*), and all persons whomsoever rightfully claiming under him, will, from time to time, and at all times hereafter, at the request and costs of the said (*assignee*), his executors, administrators and assigns, enter into and execute all such further acts, assignments, or other assurances for the more perfectly, or satisfactorily assigning, assuring and confirming the said premises hereby assigned unto the said (*assignee*), his executors, administrators and assigns, for the residue of the said term of ninety-nine years which shall be therein then to come and unexpired, as the said (*assignee*), his executors, administrators or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed.

Covenant

11. AND the said (*assignee*) doth hereby for himself,

his executors and administrators, covenant with the said (*assignor*), his executors and administrators, that he the said (*assignee*), his executors, administrators or assigns, will, from time to time, duly pay the reserved rent of 10*l.*, as and when the same shall become due and payable, and also duly observe and perform the covenants, conditions and agreements in the said hereinbefore-recited indenture of lease contained, and which, on the lessee's part, ought to be paid, observed and performed. AND ALSO shall and will from time to time, and at all times hereafter, keep harmless and indemnified the said (*assignor*), his executors or administrators, from all actions, suits and other proceedings which may be prosecuted against the said (*assignor*), his executors or administrators, and all damages and costs incidental thereto, by reason of the non-payment of the said rent, or non-observance or non-performance of the said covenants, conditions or agreements, or any of them, or in relation thereto.

From purchaser to indemnify vendor from covenants contained in the lease.

IN WITNESS, &c.

No. XXX.

Assignment of leasehold premises determinable on lives.

1. Parties.
2. Recital of lease.
3. Of contract to purchase.
4. Testatum.
5. Habendum.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*assignor*) of, &c., of the one part, and (*assignee*) of, &c., of the other part.

Recital of lease.

2. WHEREAS by indenture bearing date on or about the day of , 1837, and made between the (*original lessor*) of the one part, and the said (*assignor*) of the other part, the leasehold tenement and premises hereinafter described and intended to be hereby assigned, were, for the considerations therein mentioned, demised by the said (*original lessor*) unto the said (*assignor*), his executors, administrators and assigns, from thenceforth for the term of ninety-nine years, if A. B., therein stated to be twenty years of age or thereabouts; C. D., therein stated to be fifteen years of age or thereabouts; and E. F., therein stated to be four years of age or thereabouts, or either of them, should so long live, at the yearly rent of 12*l.*, payable quarterly, as therein mentioned, and also subject to the payment of the sum of 20*l.* by way of a heriot on the dropping of each life, and the covenants, conditions and agreements in the now reciting indenture of lease contained.

Of contract to purchase.

3. AND WHEREAS the said (*assignee*) has contracted with the said (*assignor*) for the purchase of the said leasehold tenements and premises for the residue of the said term of ninety-nine years, subject and determinable as aforesaid, for the price of 800*l.*

Testatum.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of 800*l.* sterling, paid by the said (*assignee*) to the said (*assignor*) on the execution hereof, the receipt of which the said (*assignor*) hereby acknow-

ledges, and therefrom doth hereby release the said (*assignee*), his heirs, executors, administrators and assigns, HE the said (*assignor*) DOTH by these presents assign unto the said (*assignee*), his executors, administrators and assigns, ALL, &c. [HERE DESCRIBE *parcels*], AND all rights, members and appurtenances to the said premises belonging, and all the estate, right, title and interest, both legal and equitable, of him the said (*assignor*) therein, TOGETHER with the said hereinbefore recited indenture of lease, and all other documents relating to the title of the said premises, in the possession of the said (*assignor*), or which he can procure without suit.

Habendum.

5. TO HAVE AND TO HOLD the said leasehold tenement, and all and singular other the premises hereby assigned, with their appurtenances, unto the said (*assignee*), his executors, administrators and assigns, henceforth, for all the residue of the said term of ninety-nine years, if the said A. B., C. D., and E. F., or either of them, shall so long live; SUBJECT to the rents, heriots, covenants, conditions and agreements reserved and contained in the said hereinbefore recited indenture of lease, and which on the tenant or lessee's part ought to be paid, observed and performed. [INSERT HERE *covenants for title, &c., from vendor, covenant from purchaser to indemnify vendor from the covenants contained in the lease, as in last precedent.*]

IN WITNESS, &c.

No. XXXI.

Enfranchisement of a copyholder by the lord, with usual covenants, and covenant to produce title-deeds.

1. Parties.
2. Recital of admittance of copyholder.
3. Of agreement to enfranchise.
4. Testatum.
5. Habendum, discharged of all rents, suits and services.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*lord*) of, &c., lord of the manor of B——, in the county of Devon, of the first part; (*copyholder*) of, &c., of the second part; and (*dower trustee*) of, &c., of the third part.

Recital of admittance of copyholder.

2. WHEREAS, at a court baron holden for the said manor of B——, in the county of Devon, on the day of , the said (*copyholder*) was admitted tenant of the copyhold hereditaments and premises hereinafter described, and which are also intended to be hereby granted, TO HOLD the same with the appurtenances unto the said (*copyholder*), his heirs and assigns for ever, according to the custom of the said manor, subject to the rents and duties, suits and services therefore due and of right accustomed.

Of agreement to enfranchise.

3. AND WHEREAS the said (*lord*) hath agreed to sell and convey the said hereditaments and premises to the said (*copyholder*), as and for an estate of freehold and inheritance in fee-simple, enfranchised from all fines, heriots, fealty, suits and services, for the price of 750*l.*

Testatum.

4. NOW THIS INDENTURE WITNESSETH, that for perfecting the said contract, and in consideration of the sum of 750*l.* sterling, this day paid by the said (*copyholder*) to the said (*lord*), the receipt of which the said (*lord*) hereby acknowledges, and therefrom releases the said (*copyholder*), his heirs, executors, administrators and assigns, HE the said (*lord*) DOTH by these presents grant, release and confirm unto the said (*copyholder*) and his heirs. [HERE DESCRIBE *parcels, as in* No. I., *clause* 5; INSERT *also general*

words, and all-estate clause, ib., but OMIT *all-deeds clause.*]

5. TO HAVE AND TO HOLD the said and all and singular other the hereditaments and premises hereby granted and released, with their appurtenances, unto the said (*copyholder*) and his heirs, enfranchised from all yearly and other payments, rents, quit-rents, chief-rents, customary or copyhold rents, fines, heriots, suits and services, and all other customary copyhold payments, duties, services or customs whatsoever, which by or according to the custom of the said manor of B——, the said hereditaments and premises hereby granted, or any of them, have been subject or charged with, as copyhold premises holden of, or as parcel of the said manor, TO THE USES, &c. [HERE INSERT *dower uses, ut ante,* No. I., *clauses* 6, 7; *also covenants for title, ib., clause* 8; INSERT *also covenant to produce title-deeds, as in* No. XV., *clauses* 4, 5, p. xliii.]

Habendum, discharged of all rents, suits and services.

IN WITNESS, &c.

No. XXXII.

Covenant to surrender copyholds to a purchaser in fee, with usual covenants for title.

1. Parties.
2. Recital of contract to sell.
3. Testatum, by which vendor covenants to surrender to purchaser, and in the meantime to hold in trust for him.
4. Covenants from vendor for title.
5. For quiet enjoyment, and freedom from forfeitures and incumbrances.
6. For further assurance.

Parties,

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*vendor*) of, &c., of the one part, and (*purchaser*) of, &c., of the other part. [RECITE ADMISSION *of vendor as tenant, as in last precedent.*]

Recital of contract to sell.

2. AND WHEREAS the said (*vendor*) hath agreed to sell the said copyhold hereditaments and premises, and the fee simple inheritance thereof, according to the custom of the said manor, to the said (*purchaser*), for the sum of 1,500*l.*

Testatum, by which vendor covenants to surrender, to purchaser, and in the meantime to hold in trust for him.

3. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of 1,500*l.* sterling, this day paid by the said (*purchaser*) to the said (*vendor*), the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth by these presents release the said (*purchaser*), his heirs, executors, administrators and assigns for ever, he the said (*vendor*), DOTH hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that he the said (*vendor*) will, at the costs of the said (*purchaser*), his executors or administrators, at or before the next general or other court to be holden in or for the said manor of B——, in the said county of Devon, or other the manor or manors whereof the said copyhold hereditaments are holden, well and effectually surrender into the hands of the lord or lady for the time being of the said manor or manors, by the acceptance of the steward, or by the hands of two or more customary tenants of the said manor or manors, according to the custom or respective

customs thereof, or otherwise well and effectually convey and assure to the use and behoof of the said (*purchaser*), his heirs and assigns, ALL that copyhold or customary messuage or tenement, lands and hereditaments, situate within, and being parcel of the said manor of B——, and to which the said (*vendor*) was so admitted tenant as aforesaid; and which said messuage and tenement and premises are described in the said surrender as, ALL, &c. [HERE INSERT *particular description.*] AND ALL rights, members, and appurtenances to the said copyhold hereditaments belonging or appertaining: TO THE END AND INTENT that the said (*purchaser*), his heirs or assigns, may be admitted tenant of the same copyhold hereditaments and premises on the court-rolls of the said manor; TO HOLD to him, his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor, subject to the rents, duties, suits and services therefore due and of right accustomed. AND FURTHER, that in the meantime and until such surrender shall be made and perfected, and the said (*purchaser*) or his heirs shall be admitted tenant to the said copyhold hereditaments and premises, the said (*vendor*) and his heirs, shall and will stand and be seised or possessed thereof, IN TRUST and for the sole use and benefit of the said (*purchaser*), his heirs and assigns for ever, and to be surrendered and disposed of, from time to time, as he or they shall direct or appoint; NEVERTHELESS, so that the said (*vendor*), his heirs, executors, or administrators may, during the continuance of this trust, deduct out of the rents and profits, or otherwise out of the said copyhold hereditaments and premises all such expenses as he or they may incur in respect of the same premises.

Covenants from vendor for title.

4. AND the said (*vendor*) doth hereby for himself, his heirs, executors and administrators, further covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act or thing done or permitted by him, the said (*vendor*), to the contrary), he the said (*vendor*) now hath in himself good right to surrender all and singular the said copyhold hereditaments and premises, with their appurtenances, to the use of the said (*purchaser*), his heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents.

For quiet enjoyment, and freedom from forfeiture and incumbrances.

5. And also, that the same hereditaments and premises shall be peaceably and quietly held and enjoyed accordingly, without let, suit, eviction, interruption or denial, of or by the said (*vendor*), or any other person or persons rightfully claiming, or to claim, through or under him; And that freely, clearly and absolutely exonerated by the said (*vendor*), his heirs, executors or administrators, and by him or them fully indemnified from all former surrenders, forfeitures, cause or causes of forfeiture, estates, rights, titles, liens, charges and incumbrances whatsoever, made or created by the said (*vendor*), or any other person or persons whomsoever, rightfully claiming through or under him, or through his acts, deeds, default, privity or procurement (save and excepting always the rents, duties, suits and services, to be paid, done and performed to the lord of the said manor of B——, for or in respect of the said copyhold hereditaments and premises, and of right accustomed to be paid and performed.)

For further assurance.

6. And moreover, that the said (*vendor*), and all persons rightfully claiming any estate or interest, legal or equitable, in the said copyhold hereditaments and premises, through or under him, shall and will, from time to time, and at all times hereafter, at the request and costs of the said (*purchaser*), his heirs or assigns, enter into and execute all such further acts, deeds, conveyances, surrenders and assurances whatsoever, for the more perfectly or satisfactorily surrendering, assuring and confirming the said copyhold hereditaments and premises, with their appurtenances, unto and to the use of the said (*purchaser*), his heirs and assigns, at the will of the lord, according to the custom of the said manor, and the true intent and meaning of these presents, as the said (*purchaser*), his heirs or assigns, or his or their counsel in the law shall require, and as shall be tendered to be done and executed.

In witness, &c.

No. XXXIII.

Deed to accompany a previous surrender of copyholds.

1. Parties.
2. Recital of contract to purchase.
3. That vendor should enter into covenants for title.
4. Covenant by vendor for title

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*vendor*) of, &c., of the one part, and (*purchaser*) of, &c., of the other part. Parties.

2. WHEREAS, in pursuance of a contract previously entered into between the said (*vendor*) and (*purchaser*), and in consideration of 1,500*l.* sterling, paid by the said (*purchaser*) to the said (*vendor*), the said (*vendor*) at a court baron, or customary court, held in and for the manor of B——, in the said county of Devon, on or about the day of last, surrendered into the hands of the lord of the said manor ALL [HERE DESCRIBE *copyhold premises*], TO THE USE of the said (*purchaser*), his heirs and assigns, TO HOLD, at the will of the lord, according to the custom of the said manor, subject to the rents and duties, suits and services, therefore due and of right accustomed. AND, at the same court, the said (*purchaser*) came and was admitted tenant according to the tenour of the said surrender. Recital of contract to purchase.

3. AND WHEREAS, upon the treaty for the said purchase, it was agreed that the said (*vendor*) should enter into the covenants for title hereinafter contained. That vendor should enter into covenants for title.

4. NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, he the said (*vendor*), doth hereby for himself, his heirs, executors and administrators covenant. [HERE INSERT *similar covenants for title; for quiet enjoyment; freedom from forfeitures and incumbrances; and for further assurance; as in last precedent, clauses* 4, 5, 6.] Covenant by vendor for title.

IN WITNESS, &c.

No. XXXIV.

Covenant to surrender copyholds for lives.

1. Parties.
2. Recital that copyholder was admitted tenant.
3. Of contract to purchase.
4. Testatum, by which vendor covenants to surrender to purchaser's use.
5. Habendum.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*vendor*) of, &c., of the one part, and (*purchaser*) of, &c., of the other part.

Recital that copyholder was admitted tenant.

2. WHEREAS, at a court baron held in and for the manor of T——, in the county of Cornwall, on or about the day of , the said (*vendor*) was admitted tenant of the copyhold hereditaments and premises hereinafter described, and hereby covenanted to be surrendered, with the appurtenances, TO HOLD to him, his executors, administrators and assigns, for and during the lives of A. B., then aged seven years or thereabouts; C. D., then aged twelve years or thereabouts; and E. F., then aged twenty-seven years or thereabouts, and the lives of the survivors and survivor of them, at the will of the lord, according to the custom of the said manor, by fealty suit of court, and a heriot on the dropping of each of the said lives, as appears by the copies of court-roll of the said manor, bearing date on or about the day of , 1831.

Of contract to purchase.

3. AND WHEREAS the said (*purchaser*) has contracted with the said (*vendor*) for the purchase of the said copyhold premises, free from incumbrances (except as hereinafter is excepted), for the sum of 1,950*l.*

Testatum, by which vendor covenants to surrender to purchaser's use.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract, and in consideration of the sum of 1,950*l.* sterling, paid by the said (*purchaser*) to the said (*vendor*) on the execution hereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth release the said

(*purchaser*), his heirs, executors, administrators and assigns, HE the said (*vendor*) DOTH by these presents, for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his executors, administrators and assigns, that he the said (*vendor*), his executors or administrators, will, at or before the next general meeting or other court to be holden in or for the said manor of T——, or other the manor or manors whereof the said copyhold premises are holden, well and effectually surrender into the hands of the lord or lady for the time being of the said manor or manors, according to the custom or respective customs thereof, and also well and effectually assure to, or to the use and behoof of, the said (*purchaser*), his executors, administrators and assigns, ALL, &c. [HERE DESCRIBE *copyhold parcels,*] with their appurtenances, and all the estate, right, title, interest, term and terms for life or lives, tenant right, and right of renewal, property, possession, benefit, claim, and demand whatsoever, both legal and equitable, of him the said (*vendor*) of and in the said copyhold premises; TO THE END AND INTENT that the said (*purchaser*), his executors, administrators and assigns, may be lawfully admitted tenant of the said copyhold premises on the court-rolls of the said manor.

Habendum.

5. TO HOLD to him, his executors, administrators and assigns, for and during the natural lives of the said A. B., C. D., and E. F., and the lives and life of the survivors and survivor of them, at the will of the lord, according to the custom of the said manor or manors, and subject to the customary rents, duties, suits and services therefore due and of right accustomed; AND FURTHER, that in the meantime, and until such surrender shall be made and perfected by the admission of the said (*purchaser*) as tenant to the said copyhold premises, the said (*vendor*), his executors, administrators or assigns, will stand possessed of the said copyhold premises, IN TRUST, and for the sole benefit of the said (*purchaser*), his executors, administrators and assigns. [INSERT HERE *covenants for title, as in* No. XXXII., *but in the covenant for further assurance, for* "heirs and assigns" *of the purchaser, substitute* "executors, administrators and assigns."]

IN WITNESS, &c.

No. XXXV.

Conveyance of freehold estates of inheritance, and for lives; assignment of leaseholds; and covenants to surrender copyholds of inheritance to a purchaser.

1. Parties.
2. Recital that vendor is seised in fee of freeholds of inheritance.
3. That leasehold premises for lives were conveyed to vendor.
4. Of original demise of leaseholds for years.
5. Of admission of vendor to copyholds.
6. Of contract to purchase.
7. Testatum.
8. Habendum, freeholds of inheritance to dower uses.
9. Habendum, leaseholds for residue of lives.
10. Habendum, leaseholds for years for residue of term.
11. Covenant from vendor to surrender copyholds.
12. Covenants from vendor that he has good right to grant, assign and surrender.
13. For quiet enjoyment and freedom from incumbrances.
14. For further assurance.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*vendor*) of, &c. of the first part; (*purchaser*) of, &c., of the second part; and (*dower trustee*) of, &c., of the third part.

Recital that vendor is seised in fee of freeholds of inheritance.

2. WHEREAS, the said (*vendor*) is seised to him and his heirs of an estate of inheritance in fee simple of the hereditaments and premises described and set forth in the first schedule hereunder written, and intended to be hereby granted and released, with the appurtenances.

That leasehold premises for lives were conveyed to vendor.

3. AND WHEREAS, by indenture of release dated the day of , and made in pursuance of an act for rendering a release as effectual for the conveyance of freehold estates as a lease and release by the same parties, made between (*releasor*) of the one part, and the said (*vendor*) of the other part, the hereditaments and premises described and set forth in the second schedule hereunder written, were released and assured unto the said (*vendor*), his heirs and assigns, for and during the natural life of him the said (*vendor*), and C. D. and E. F., in the now reciting indenture described, and the lives and life of the survivors and survivor of them, at the yearly rent of 20*l.*, payable quarterly, and

subject to the covenants, conditions and agreements in the now reciting indenture contained.

Of original demise of leaseholds for years.

4. And whereas, by indenture bearing date on or about the day of , 1795, and made between (*lessor*) of the one part, and (*lessee*) of the other part, the leasehold messuages and premises described and set forth in the third schedule hereunder written, were demised unto the said (*lessee*), his executors, administrators and assigns, from thenceforth, for the term of 1,000 years ; the residue of which said term, by virtue of divers *mesne* assignments, and other acts and assurances in the law, and ultimately by indenture of assignment, dated the day of , and made between (*assignor*) of the one part, and the said (*vendor*) of the other part, became and is now vested in the said (*vendor*.)

Of admission of vendor to copyholds.

5. And whereas, at a court baron holden for the manor of A——, in the county of B——. on or about the day of , the said (*vendor*) was duly admitted tenant of the copyhold hereditaments and premises described and set forth in the fourth schedule hereunder written, with their appurtenances; to hold the same to him, his heirs and assigns, according to the custom of the said manor, subject to the rents, duties, suits and services therefore due and of right accustomed.

Of contract to purchase.

6. And whereas the said (*purchaser*) has contracted with the said (*vendor*) for the absolute purchase of all and singular the said freehold estates of inheritance, and for lives, the said leaseholds for years, and the said copyhold estates of inheritance, for the sum of 4,500*l*.

Testatum.

7. Now this Indenture witnesseth, that in pursuance of the said recited contract, and in consideration of the sum of 4,500*l*. sterling, paid by the said (*purchaser*) to the said (*vendor*) on the execution hereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth release the said (*purchaser*), his heirs, executors, administrators and assigns, he the said (*vendor*) doth by these presents, and according to the respective nature and qualities of the premises, grant, release, assign and confirm unto the said (*purchaser*), his heirs, executors, administrators and assigns: First, all and singular the messuages, tenements, lands, hereditaments and premises described and set forth in the first schedule hereunder-

written. SECONDLY, all and singular the messuages, farms and tenements, lands and premises, described and set forth in the second schedule hereunder written. AND THIRDLY, all and singular the leasehold messuage, or tenement and premises, described and set forth in the third schedule hereunder-written; AND all rights, members and appurtenances whatsoever to the said messuages, lands and tenements, hereditaments and premises belonging; AND all the estate, right, title and interest, both legal and equitable, of him the said (*vendor*) therein, TOGETHER with all deeds and writings relating to the title thereof now in his possession, or which he can obtain without suit.

Habendum, freeholds of inheritance to dower uses.

8. TO HAVE AND TO HOLD the said messuage, tenements, lands, and all and singular other the hereditaments and premises hereby granted and released, and described in the first schedule hereunder-written, unto the said (*purchaser*) and his heirs, TO SUCH uses, upon such trusts, and for such ends, intents and purposes, as the said (*purchaser*) shall from time to time, or at any time, by deed or deeds appoint; and in default of and until such appointment, and subject thereto, TO THE USE of the said (*purchaser*) and his assigns for the term of his natural life, without impeachment of waste, and after the determination of that estate by any means in his lifetime, TO THE USE of the said (*dower trustee*), his executors and administrators, during the life of, and IN TRUST for the said (*purchaser*) and his assigns; and after the determination of the said hereinbefore lastly limited estate, TO THE USE of the said (*purchaser*), his heirs and assigns for ever. AND it is hereby declared that no widow of the said (*purchaser*) shall be entitled to dower out of the said hereditaments and premises hereby granted.

Habendum, leaseholds for residue of lives.

9. AND TO HAVE AND TO HOLD the said messuages, farms and tenements, described and set forth in the second schedule hereunder-written, and hereby also granted, with their and every of their rights, members and appurtenances, unto and to the use of the said (*purchaser*), his heirs and assigns, for and during all the rest, residue and remainder of the lives of the said (*vendor*), C. D. and E. F., and the lives and life of the survivors and survivor of them; subject to the rents and covenants, conditions and agreements reserved and contained in the said hereinbefore-

recited indenture of release of the day of , and which, on the tenant or lessee's part, are, or ought to be, paid, done, observed and performed.

Habendum, leaseholds for years for residue of term.

10. AND TO HAVE AND TO HOLD the said leasehold messuage or tenement, described and set forth in the third schedule hereunder-written, with the appurtenances thereunto belonging, unto the said (*purchaser*), his executors, administrators and assigns, henceforth for all the rest, residue and remainder of the said term of 1,000 years, which is now therein to come and unexpired.

Covenant from vendor to surrender copyholds.

11. AND THIS INDENTURE FURTHER WITNESSETH. [HERE INSERT *covenant to surrender the copyhold premises described in the third schedule, as in* No. XXXI., *clause* 3.]

Covenants from vendor that he has good right to grant, assign and surrender.

12. AND the said (*vendor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs, executors, administrators and assigns, that (notwithstanding any act or thing done or permitted by the said (*vendor*), or any of his ancestors or testators to the contrary), the said (*vendor*) now hath in himself good right by these presents to grant, release, assign and confirm the said freehold and leasehold hereditaments and premises, and also to surrender the said copyhold hereditaments, in manner aforesaid, according to the true intent and meaning of these presents.

For quiet enjoyment and freedom from incumbrances.

13. AND FURTHER, that the same freehold, leasehold and copyhold hereditaments and premises shall or may be peaceably and quietly held and enjoyed accordingly, without let, suit, eviction, ejection, molestation or denial, of or by the said (*vendor*), or any other person or persons rightfully claiming through, or under him, or through or under any of his ancestors or testators, and that free from all estates, rights, titles, liens, charges and incumbrances whatsoever, created or occasioned by the said (*vendor*), or any other person or persons rightfully claiming through or under him, or through or under any of his ancestors or testators.

For further assurance.

14. AND MOREOVER that the said (*vendor*), and all persons whomsoever rightfully claiming any estate or interest, legal or equitable, in the said freehold, leasehold, and copyhold hereditaments and premises, through, or under him, shall and will from time to time and at all times hereafter, at the request and

costs of the said (*purchaser*), his appointees, heirs, executors, administrators or assigns, enter into, execute and perfect all such further acts, deeds, conveyances, assignments, surrenders and other assurances whatsoever, for the further, better, or more perfectly or satisfactorily assuring and confirming the said freehold, leasehold, and copyhold hereditaments and premises, unto or to the use of the said (*purchaser*), his heirs, executors, administrators and assigns, according to the respective natures and qualities of the said premises, and the true intent and meaning of these presents, as the said (*purchaser*), his appointees, heirs, executors, administrators or assigns, or his or their counsel in the law shall require, and as shall be tendered to be done and executed. [HERE INSERT *covenant on the part of the purchaser to indemnify the vendor from any breach of the covenants contained in the lease for lives, ut ante*, No. XXVIII., *clause* 7.]

IN WITNESS, &c.

THE FIRST SCHEDULE to which the within-written indenture refers. [DESCRIBE *the parcels of which the vendor was seised in fee.*]

THE SECOND SCHEDULE, &c. [HERE DESCRIBE *the parcels comprised in the indenture of release of the day of .*]

THE THIRD SCHEDULE, &c. [HERE DESCRIBE *the leasehold premises for years.*]

THE FOURTH SCHEDULE, &c. [HERE DESCRIBE *copyhold premises from the last surrender.*]

No. XXXVI.

Conveyance of freeholds, where both freeholds and copyholds have been purchased, and the purchase-money is apportioned for the purpose of saving stamp duty.

1. Parties.
2. Recital of contract to purchase.
3. Of intention to apportion purchase-money.
4. Testatum.

Parties. 1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*vendor*), of, &c., of the one part, and (*purchaser*), of, &c., of the other part. [RECITE *that vendor is seised in fee, as in clause* 2, *last precedent; and then recite his admission to the copyholds, as in clause* 5.]

Recital of contract to purchase. 2. AND WHEREAS the said (*purchaser*) has contracted with the said (*vendor*) for the absolute purchase of the said freehold and copyhold hereditaments and premises, free from incumbrances, except the rents, fines, heriots, suits, and services to which the said copyhold premises are liable and accustomed, for the sum of 12,500*l.*

Of intention to apportion purchase-money. 3. AND WHEREAS, in pursuance of the several acts of Parliament imposing an *ad valorem* duty on conveyances on sales, the sum of 12,450*l.* has been apportioned as the price of the said freehold hereditaments and premises, and the sum of 50*l.* as the price of the said copyhold hereditaments and premises, to the latter of which the said (*purchaser*) hath been duly admitted tenant, and the uses of such surrender and admittance duly declared by an indenture bearing even date herewith.

Testatum. 4. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of 12,450*l.* sterling, the sum apportioned as the price of the said freehold hereditaments and premises, paid by the said (*purchaser*) to the said (*vendor*) on the execution hereof, the receipt of which the said (*vendor*) hereby acknow-

ledges, and therefrom doth release the said (*purchaser*), his heirs, executors, administrators and assigns; he, the said (*vendor*), DOTH by these presents grant and confirm unto the said (*purchaser*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels*, INSERT *general words*, HABENDUM, *and covenants for title, as in ordinary conveyances of freehold estates.*]

IN WITNESS, &c.

No. XXXVII.

Conveyance in fee of an advowson.

1. Parties.
2. Recital that vendor seised in fee has contracted to sell.
3. Testatum.
4. Covenants for title.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*vendor*), of, &c., of the first part, (*purchaser*), of, &c., of the second part, and (*dower trustee*), of, &c., of the third part.

Recital that vendor seised in fee has contracted to sell.

2. WHEREAS the said (*vendor*) being seised in fee of the advowson and rectory of the parish church of B., in the county of D———, whereof J. S. is now incumbent, hath contracted to sell the same, and the inheritance thereof in fee-simple, to the said (*purchaser*), for the sum of 1,800*l.*

Testatum.

3. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of 1,800*l.* sterling, this day paid by the said (*purchaser*) to the said (*vendor*), the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth release the said (*purchaser*), his heirs, executors, administrators and assigns for ever, he the said (*vendor*) DOTH by these presents grant and confirm unto the said (*purchaser*), and his heirs, ALL that advowson, donation, and right of patronage and presentation, of and in the rectory or parish church of B., in the county of D———; and all rights, members and appurtenances to the same belonging; and all the estate, right, title and interest, both legal and equitable, of him the said (*vendor*) therein. [HERE INSERT *habendum to uses to bar dower, ut ante*, No. III., *clauses 6 and 7.*]

Covenants for title.

4. AND the said (*vendor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*) and his heirs, that notwithstanding any act done by him the said (*vendor*), or any of his ancestors or testators to the contrary, he

the said (*vendor*) is, at the time of the execution hereof, lawfully, rightfully, and absolutely seised of the said advowson and premises, with the appurtenances, of and for a good, sure, perfect, absolute and indefeasible inheritance in fee-simple, without any manner of condition, contingent proviso, power of revocation, or limitation of any other use or uses, or any other restraint, cause, matter or thing whatsoever, to alter, change, charge, revoke, make void, lessen, abridge or determine the same estate. [INSERT *covenants that vendor has good right to convey; for quiet enjoyment, freedom from incumbrances, and for further assurance, ut ante*, No. III., *clause* 8.]

IN WITNESS, &c.

No. XXXVIII.

Grant of the next presentation to an advowson.

1. Parties.
2. Recital of contract.
3. Testatum.
4. Habendum.

Parties. 1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*vendor*), of, &c., of the one part, and (*purchaser*), of, &c., of the other part. [RECITE *that advowson had been conveyed to vendor to dower uses, as in* No. I., *clause* 2.]

Recital of contract. 2. AND WHEREAS the said (*purchaser*) has contracted with the said (*vendor*) for the purchase of the next presentation of the said church, upon the decease, resignation, or deprivation of the said (*incumbent*), or avoidance of the said church, at the price of 1,200*l.*

Testatum. 3. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of 1,200*l.* sterling, this day paid by the said (*purchaser*) to the said (*vendor*) on the execution hereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth release the said (*purchaser*), his heirs, executors, administrators and assigns, he the said (*vendor*) DOTH by these presents grant and confirm unto the said (*purchaser*), his executors, administrators and assigns, ALL THAT the right or turn, avoidance, or right of nomination and presentation, of and to the said rectory or parish church of B., in the county of D———, whenever the same shall first become void after the execution hereof, by the death, resignation, or deprivation of the said (*incumbent*); and all the rights, privileges, commodities and emoluments to the same belonging or in anywise appertaining.

Habendum. 4. TO HAVE AND TO HOLD the said next turn and presentation and premises hereby granted, with the appurtenances, unto the said (*purchaser*), his executors, administrators, and assigns. [INSERT *covenant that vendor is seised in fee, as in last precedent, and for quiet enjoyment, &c. as in* No. I., *clause* 8.]

No. XXXIX.

Conveyance of copyholds of inheritance by a mortgagor and mortgagee to a purchaser in fee.

1. Parties.
2. Recital of covenant to surrender copyholds to mortgagee's use.
3. That surrender was afterwards duly made.
4. That default was made in payment, but that mortgagee has not been admitted tenant.
5. Of contract to sell.
6. That the original mortgage debt has been considerably reduced by subsequent payments.
7. Testatum, mortgagee covenants to surrender to purchaser.
8. Habendum to purchaser in fee.
9. That until surrender mortgagee will stand possessed in trust for purchaser.
10. Covenant from mortgagee that he has done no act to incumber.
11. Further testatum by which mortgagor releases equity of redemption.
12. Habendum to purchaser in fee.
13. Covenant from mortgagor that mortgagee has good right to surrender, and mortgagor to release and confirm.
14. For quiet enjoyment and freedom from incumbrances.
15. For further assurance.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*mortgagee*), of, &c., of the first part, (*mortgagor*), of, &c., of the second part, and (*purchaser*), of, &c., of the third part.

Recital of covenant to surrender copyholds to mortgagee's use.

2. WHEREAS by indenture bearing date on or about the day of , in the year 18 , and made between the said (*mortgagor*) of the one part, and the said (*mortgagee*) of the other part, *After reciting* that at a court baron holden in and for the manor of B., in the county of Somerset, on the day of , the said (*mortgagor*) had been admitted tenant of the copyhold hereditaments and premises therein and hereinafter described, TO HOLD the same, with their appurtenances, unto the said (*mortgagor*), his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor, *subject* to the rents, heriots, duties, suits and services therefore due and of right accustomed; *And also reciting* that the said (*mortgagee*) had agreed to lend the said (*mortgagor*) the sum of 1,500*l.* on the security of the said copyhold hereditaments and premises, IT IS WITNESSED, that in consideration of

1,500*l.* sterling, then paid by the said (*mortgagee*) to the said (*mortgagor*), the said (*mortgagor*) did thereby for himself, his heirs, executors and administrators, covenant with the said (*mortgagee*), his heirs, executors, administrators and assigns, that he the said (*mortgagor*) or his heirs, would at his or their own costs, at or before the next general or other court to be holden in and for the aforesaid manor, surrender, or otherwise well and effectually assure unto the use and behoof of the said (*mortgagee*), his heirs and assigns, the said copyhold hereditaments and premises, TO THE INTENT that the said (*mortgagee*), his heirs and assigns might be admitted tenant of the same, To HOLD to him, his heirs and assigns for ever, at the will of the lord according to the custom of the said manor; subject to the rents, heriots, duties, suits and services therefore due and of right accustomed, SUBJECT NEVERTHELESS to a proviso for redemption, on payment by the said (*mortgagor*), his heirs, executors, administrators or assigns, unto the said (*mortgagee*), his executors, administrators or assigns, of the sum of 1,500*l.*, and of interest at the rate of 4*l.* for every 100*l.* by the year, on the day of next.

That surrender was afterwards duly made.

3. AND WHEREAS the said (*mortgagor*) did shortly afterwards, in pursuance of the said recited covenant, duly surrender the said copyhold hereditaments and premises to the use of the said (*mortgagee*), his heirs and assigns, conditionally, for securing the repayment of the said sum of 1,500*l.* and interest at the time aforesaid.

That default was made in payment.

4. AND WHEREAS default was made in payment by the said (*mortgagee*) of the said sum of 1,500*l.*, at the time appointed for payment thereof in the said recited proviso for redemption, but nevertheless the said (*mortgagee*) was not thereupon, nor hath he at any time since, been admitted tenant to the said copyhold hereditaments and premises so surrendered as aforesaid.

Of contract to sell.

5. AND WHEREAS the said (*mortgagor*) has contracted to sell the said hereditaments and premises, and the fee-simple and inheritance thereof free from all incumbrances, to the said (*purchaser*) for the sum of 3,490*l.*

That the original mortgage

6. AND WHEREAS the said (*mortgagor*) hath by several payments made at different times, considerably

debt has been considerably reduced by subsequent payments.

reduced the said mortgage debt, and upon an account this day made up and stated between the said (*mortgagee*) and (*mortgagor*), there appears to be now due and owing to the said (*mortgagee*), for principal and interest upon his said recited mortgage security, the sum of 430*l.* and no more, as the said (*mortgagee*) doth hereby testify and acknowledge.

Testatum, mortgagee covenants to surrender to purchaser.

7. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract and in consideration of the sum of 430*l.* sterling, this day paid by the said (*purchaser*) to the said (*mortgagee*) (at the request and by the direction of the said (*mortgagor*) testified by his being a party hereunto and concurring herein), the receipt of which the said (*mortgagee*) hereby acknowledges, and also that the same is in full satisfaction of all principal moneys and interest due to him on his said recited mortgage security, and therefrom doth by these presents acquit, exonerate and for ever discharge the said (*purchaser*), his executors, administrators and assigns; and also in consideration of the sum of 3,060*l.* sterling (the *residue* of the said purchase-money), at the same time paid by the said (*purchaser*) to the said (*mortgagor*); the receipt and payment in manner aforesaid, of which two several sums of 430*l.* and 3,060*l.*, making together the sum of 3,490*l.*, the purchase-money of the said copyhold hereditaments and premises, the said (*mortgagor*) hereby acknowledges, and therefrom doth by these presents acquit, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, HE the said (*mortgagee*), (at the request and by the direction of the said (*mortgagor*) (testified as aforesaid), DOTH hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that he the said (*mortgagee*), or his heirs, shall and will, at the costs of the said (*mortgagor*), his heirs, executors, administrators or assigns, at or before the next general or other court to be holden in and for the said manor of B., in the county of Somerset, or other the manor or manors whereof the said copyhold hereditaments are holden, procure himself or themselves to be duly admitted under the said hereinbefore recited conditional surrender of the said (*mortgagor*), to all and singular the said copyhold hereditaments and premises, and immediately upon such admission,

well and effectually surrender the same into the hands of the lord or lady for the time being of the said manor, by the acceptance of the steward, or by the hands of two or more customary tenants of the said manor, or according to the custom or respective customs thereof, or otherwise well and sufficiently convey and assure to the use and behoof of the said (*purchaser*), his heirs and assigns, ALL that copyhold and customary messuage and tenement, lands and premises, situate, lying and being within the manor of B., in the said county of Somerset; all which premises are described in the said hereinbefore lastly recited surrender as ALL [HERE INSERT *particular description.*] AND all the estate, right, title and interest, both legal and equitable of them the said (*mortgagee*) and (*mortgagor*) therein; TO THE INTENT, that the said (*purchaser*), or his heirs, may be admitted tenant to the said copyhold hereditaments and premises.

Habendum to purchaser in fee.

8. TO HOLD to him, his heirs and assigns for ever, at the will of the lord according to the custom of the said manor, subject to the rents, heriots, duties, suits, and services, therefore due and of right accustomed.

That until surrender mortgagee will stand possessed in trust for purchaser.

9. AND FURTHER, that in the meantime, and until such surrender shall be made and perfected, and the said (*purchaser*), or his heirs, admitted tenant to the said copyhold hereditaments and premises, the said (*mortgagee*) and his heirs, shall and will stand and be possessed thereof, IN TRUST and for the sole use and benefit of the said (*purchaser*), his heirs and assigns for ever, to be surrendered and disposed of from time to time as he or they shall direct or appoint.

Covenant from mortgagee that he has done no act to incumber.

10. AND ALSO, that the said (*mortgagee*) hath not done or permitted, or willingly or knowingly suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof the said copyhold hereditaments and premises, or any part of the same, are, is, can, shall or may be impeached, charged, incumbered, or prejudicially affected in any manner howsoever.

Further testatum by which mortgagor releases equity of redemption.

11. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, the said (*mortgagor*) DOTH by these presents release, ratify and confirm unto the said (*purchaser*) and his heirs, ALL THAT the right and equity of redemption of him the said (*mortgagor*), and of ALL those the aforesaid copyhold hereditaments and premises, with their and

every of their rights, members and appurtenances; AND all the estate, right, title and interest, benefit, claim and demand whatsoever, of him the said (*mortgagor*) therein.

Habendum to purchaser in fee.

12. TO HAVE AND TO HOLD the said and all and singular other the copyhold hereditaments and premises hereby released, with their appurtenances, unto and to the use of the said (*purchaser*), his heirs and assigns for ever; at the will of the lord according to the custom of the said manor, SUBJECT to the rents, heriots, duties, suits and services therefore due and of right accustomed.

Covenant from mortgagor that mortgagee has good right to surrender and mortgagor to release and confirm.

13. AND the said (*mortgagor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act, deed, matter or thing whatsoever, done or permitted by him the said (*mortgagor*) to the contrary) the said (*mortgagee*) now hath in himself good right to surrender, and the said (*mortgagor*) to release and confirm the said copyhold hereditaments and premises, with their appurtenances, to the use of the said (*purchaser*), his heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents.

For quiet enjoyment.

14. AND ALSO, that (notwithstanding any such act, deed, matter or thing as aforesaid) the same copyhold hereditaments and premises shall from henceforth from time to time and at all times be peaceably and quietly held and enjoyed according to the limitations hereinbefore expressed and contained, without any lawful let, suit, eviction, ejection, interruption, molestation or disturbance, of or by the said (*mortgagor*), or any other person or persons whomsoever, rightfully claiming or to claim by, from, through, under or in trust for him.

Freedom from incumbrances.

AND that freely, clearly and absolutely indemnified by the said (*mortgagor*), his heirs, executors or administrators, of and from all estates, rights, titles, liens, charges and incumbrances whatsoever, created or occasioned by the said (*mortgagor*), or any other person or persons whomsoever rightfully claiming or to claim by, from, through, under and in trust for him, or by or through his acts, deeds, defaults, privity or procurement. SAVE AND EXCEPTING always the rents, heriots, duties, suits and services, to be rendered, paid, done and performed to the lord or lady of the said manor of B., for or in

respect of the said copyhold hereditaments and premises, and of right accustomed to be paid and performed.

15. And moreover that the said (*mortgagor*) and all persons rightfully claiming any estate or interest, legal or equitable in the said copyhold hereditaments and premises, through or under him, shall and will from time to time, and at all times hereafter, at the request and costs of the said (*purchaser*), his heirs or assigns, enter into, execute and perfect all such further acts, deeds, devices, conveyances, surrenders and assurances whatsoever, for the further, better or more perfectly or satisfactorily surrendering, assuring and confirming the said copyhold hereditaments and premises, with their appurtenances, unto and to the use of the said (*purchaser*), his heirs and assigns, at the will of the lord, according to the custom of the said manor, and the true intent and meaning of these presents, as the said (*purchaser*), his heirs or assigns, or his or their counsel in the law, shall require. For further assurance.

In witness, &c.

No. XL.

Conveyance in fee to a purchaser of freehold property charged with an annuity, the annuitant on receiving a portion of the purchase-money concurring to release her interest. Variation where the annuitant concurs without receiving any consideration.

1. Parties.
2. Recital of will creating annuity, and devising premises to vendor.
3. Of death of testator, and probate of his will.
4. Of contract to sell.
5. That annuity still remains charged on premises, and that annuitant has agreed to concur in conveyance for the purpose of releasing the same.
6. Testatum, by which vendor conveys.
7. Habendum to purchaser in fee.
8. Further testatum, by which annuitant releases annuity.
9. Covenant from annuitant that premises shall be held discharged of annuity.

A. Substituted clause, where the annuitant concurs without receiving any consideration.

Parties.

1. THIS INDENTURE, made the day of A.D. 185 , BETWEEN (*vendor*), of, &c., of the first part, (*annuitant*), of, &c., of the second part, and (*purchaser*), of, &c., of the third part.

Recital of will creating annuity, and devising premises to vendor.

2. WHEREAS (*testator*), late of, &c., esquire, deceased, by his last will, legally executed and attested, bequeathed unto his daughter, the said (*annuitant*), one clear yearly rent-charge or annuity of 100*l.* payable quarterly, during the term of her natural life, as in the now reciting will is expressed; and the said (*testator*) charged the payment of the same upon all his real and personal estate. And all the rest, residue and remainder of his manors, messuages, lands, tenements and hereditaments, and all other his real and personal estate whatsoever and wheresoever, the said (*testator*) gave and devised to his son the said (*vendor*) and his heirs. TO HOLD to him, his heirs, executors, administrators and assigns for ever, and appointed the said (*vendor*) sole executor of his said will.

Of death of testator, and probate of his will.

3. AND WHEREAS the said (*testator*) died on or about the day of 18 , without

having altered or revoked his said will, which was duly proved by the said (*vendor*) in the Prerogative Court of the Archbishop of Canterbury, on or about the day of .

Of contract to sell.

4. And whereas the said (*vendor*) has contracted to sell the fee-simple and inheritance of the hereditaments and premises hereinafter described (and which form a portion of the lands and hereditaments comprised in the said hereinbefore recited will of the said (*testator*), deceased) to the said (*purchaser*), free from all incumbrances, for the sum of 6,500*l.*

That annuity still remains charged on premises, and that annuitant has agreed to concur in conveyance for the purpose of releasing the same.

5. And whereas(*a*) the said annuity of 100*l.* being charged upon the said hereditaments and premises, together with the rest of the real and personal estate of the said testator deceased, the said (*annuitant*) hath agreed to concur in these presents and to release her said annuity, upon receiving the sum of 1,250*l.* out of the said purchase-moneys.

Testatum, by which vendor conveys.

6. Now this Indenture witnesseth, that in pursuance of the said recited contract,(*b*) and in consideration of the sum of 1,250*l.* sterling (part of the purchase-money), paid by the said (*purchaser*) to the said (*annuitant*) on the execution hereof, the receipt of which the said (*annuitant*) hereby acknowledges, and therefrom doth release, exonerate and for

---

(*a*) If the annuitant concurs without any consideration, substitute—

Recital of agreement by annuitant to release annuity, without receiving any consideration.

A. "And whereas the said annuity of 100*l.* being as aforesaid charged upon the whole of the real and personal estate of the said testator of very considerable value over, above and besides the hereditaments and premises hereinafter described, and the said (*vendor*) being desirous of relieving the said hereditaments and premises from the said annuity, in order to convey a perfect and unincumbered title to the said (*purchaser*), hath requested the said (*annuitant*) to release the same premises from such charge, which she hath agreed to do, being perfectly satisfied with the security of the remaining real and personal estate on which the same is charged as aforesaid."

(*b*) If the annuitant releases without receiving any consideration the words within brackets must be omitted.

ever discharge the said (*purchaser*) his heirs, executors, administrators and assigns; ALSO, in consideration of the further sum of 5,250*l.*(*c*) (the remaining part of the said purchase-money), at the same time as aforesaid paid by the said (*purchaser*) to the said (*vendor*), the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, HE the said (*vendor*), DOTH by these presents grant, release and confirm unto the said (*purchaser*), and his heirs, ALL, &c. [HERE DESCRIBE *the parcels;* INSERT *general words, all-estate clause, but omitting all-deeds clause, ut ante*, No. I., *clause* 5.]

Habendum to purchaser in fee.

7. TO HAVE AND TO HOLD the said , and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*purchaser*) and his heirs, TO THE USE of the said (*purchaser*), his heirs and assigns for ever (*d*).

Further testatum by which annuitant releases annuity.

8. AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the premises, SHE, the said (*annuitant*), DOTH by these presents remise, release and for ever quit claim unto the said (*purchaser*) and his heirs, ALL THAT the said annuity of 100*l.* so granted to her, the said (*annuitant*), for the term of her natural life, and charged upon the said hereditaments and premises hereby granted and released by the said hereinbefore recited will of the said (*testator*) deceased as aforesaid. TO THE INTENT that the said (*purchaser*), his heirs and assigns, and the hereditaments and premises hereby granted and released, may be effectually released, exonerated and for ever discharged therefrom, and from all the powers and remedies for recovering and enforcing the payment thereof, and of and from all claims and demands whatsoever in relation thereto.

Covenant from annuitant that premises

9. AND the said (*annuitant*), doth hereby for herself, her heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that

---

(*c*) If the annuitant conveys without consideration the full amount of purchase-money must be here stated.

(*d*) If the property is to be limited to dower uses, insert clauses for that purpose, *ut ante*, No. I., clause 7.

the said hereditaments and premises hereby granted and released, with their appurtenances, shall henceforth from time to time and at all times hereafter, be held and enjoyed by the said (*purchaser*), his heirs and assigns, freed and discharged, or otherwise well and sufficiently protected, saved harmless, and kept indemnified, of and from the said annuity of 100*l.* in the same manner as if the same had never been charged thereon by the said hereinbefore recited will of the said (*testator*) deceased, or in any other manner howsoever. [ADD *usual qualified covenants for title from vendor, ut ante*, No. I., *clauses* 8 *to* 11 *inclusive*, pp. iii., iv. INSERT ALSO *recital that title-deeds relate to other property of the vendor of greater value, and covenant for their production, ut ante*, No. XVII., *clauses* 3, 4, pp. xlviii., xlix.]

shall be held discharged of annuity.

IN WITNESS, &c.

No. XLI.

Re-grant of an annuity charged upon real estate, which had been extinguished by the annuitant concurring in a release of part of the lands out of which it was payable.(a)

1. Parties.
2. Recital of deed by which part of the lands charged with annuity are conveyed to purchaser.
3. Testatum, by which the owner of the lands regrants the annuity to be issuing out the remaining real property.
4. Power of distress.

Parties.

1. THIS INDENTURE made the day of A.D. 185 , BETWEEN (*present grantor of rent-charge or annuity*), of, &c., of the one part, and (*annuitant*), of, &c., of the other part.

Recital of deed by which part of the lands charged with the annuity are conveyed to purchaser.

2. WHEREAS by indenture bearing even date with these presents, but executed previously, and made between the said (*grantor*) of the one part, and (*purchaser*) of the other part; AFTER RECITING that (*testator*), late of, &c., esquire, deceased, had by his last will, dated the day of , devised all his real estate unto and to the use of the said (*grantor*), his heirs and assigns, charged with one yearly rent-charge or annual sum of 100*l.*, payable to the said

---

Practical observations.

(a) As a rent-charge issues equally out of every part of the land chargeable with the payment of it, a release of any part of the land will, by implication of law, unless otherwise declared between the parties, be an exoneration of the whole: (Co. Litt. 148; 2 Roll. Abr. 414.) In case, therefore, as in a last precedent (No. XL.) lands chargeable with a rent-charge are sold, and the annuitant concurs in the sale and releases the purchased lands, such release will operate as an extinguishment of the whole rent-charge: but if the owner of the lands was to grant that the grantee shall distrain for the rent, the whole rent-charge will be preserved; because such power of distress amounts to a new grant: (Co. Litt. 147; Abr. 236.) The best mode of attaining this new object, seems to be a deed of grant and covenant from the owner of the lands, that the remaining lands shall remain chargeable with the whole rent-charge, with a power of distress in case of nonpayment, as in the above precedent.

(*annuitant*) during the term of her natural life as therein mentioned; and also that the said testator had died without altering or revoking his said will, which had been duly proved in the Prerogative Court of the Archbishop of Canterbury; AND ALSO RECITING that the said (*grantor*) having contracted to sell the hereditaments and premises thereinafter described, which formed a portion of the said testator's real estate, to the said (*purchaser*), and that the said (*annuitant*) had agreed to release the portion of the hereditaments so contracted to be sold from the said annuity, being perfectly satisfied with the security of the remainder of the real and personal estate of the said (*testator*) so charged therewith; IT IS WITNESSED, that in consideration of 1,250*l.* sterling, paid by the said (*purchaser*) to the said (*grantor*), and for the nominal pecuniary consideration therein expressed to be paid by the said (*purchaser*) to the said (*annuitant*), the said (*grantor*) did, by the now reciting indenture, grant and release unto the said (*purchaser*) and his heirs, ALL [HERE DESCRIBE *parcels conveyed by the recited deed.*] TO HOLD the same, with their appurtenances, unto the said (*purchaser*) and his heirs; TO THE USE of the said (*purchaser*), his heirs and assigns for ever. AND IT IS BY THE NOW RECITING INDENTURE FURTHER WITNESSED, that for the consideration aforesaid, the said (*annuitant* did remise, release and quit claim unto the said (*purchaser*) and his heirs, all that the said annuity of 100*l.*, so granted to her the said (*annuitant*) for the term of her life, and so charged as aforesaid upon the hereditaments and premises thereby granted and released, TO THE INTENT that the same premises might be wholly exonerated therefrom.

Testatum by which the owner of the lands regrants the annuity to be issuing out of the remaining property.

3. NOW THIS INDENTURE WITNESSETH, and it is hereby declared and agreed by and between the said parties hereto, and particularly the said (*grantor*), DOTH by these presents for himself, his heirs, executors and administrators, covenant, promise, grant and agree, with and to the said (*annuitant*), her executors, administrators and assigns, that all the real estate of the said (*testator*) deceased, so devised by him as aforesaid, and not comprised in the said hereinbefore recited indenture, bearing even date herewith, shall from henceforth be charged and chargeable with the said annuity or yearly rent-charge

of 100*l.* to be paid and payable to the said (*annuitant*) and her assigns for and during the term of her natural life, by four quarterly payments, on the day of , the day of , the day of , and the day of in every year; the first quarterly payment to be made on the day of next.

Power of distress.

4. AND IT IS HEREBY FURTHER DECLARED AND AGREED, that in case any quarterly payment of the said annuity or yearly rent-charge shall be in arrear for the space of fourteen days next after any of the days whereon the same ought to be paid as aforesaid, THEN, and in such case, and so often as the same shall happen, it shall be lawful for the said (*annuitant*), or her assigns, to enter upon the said hereditaments and premises so charged therewith as last aforesaid, and then and there to distrain for the same in like manner as in the case of distress taken for nonpayment of rent reserved upon common leases, TO THE INTENT that thereby, and therewith, the said (*annuitant*), and her assigns, may be fully paid and satisfied the said annuity or rent-charge of 100*l.*, and all costs and expenses attending the nonpayment and recovery of the same.

IN WITNESS, &c.

No. XLII.

Conveyance in fee of property charged with an annuity of 100l. per annum, the vendor undertaking to convey another estate to trustees by way of indemnity against the incumbrance.

1. Parties.
2. Recital of settlement, by which a rent-charge of 100*l.* was limited to the vendor's mother for life, and the lands to vendor's father for life, with remainder to trustees, to preserve, &c., with remainder to his first and other sons in tail male general.
3. Of death of father, leaving his widow, and vendor, his heir in tail, him surviving.
4. Of disentailing deed, by which vendor barred the entail.
5. Of agreement to purchase.
6. That the premises so sold forming part of the lands charged with the rent charge of 100*l.*, vendor had agreed to convey other lands by way of indemnity.

1. THIS INDENTURE, made the day of A.D. 185 , BETWEEN (*vendor*), of, &c., of the first part, (*purchaser*), of, &c., of the second part, and (*purchaser's dower trustee*), of, &c., of the third part. Parties.

2. WHEREAS, by indentures of lease and release, bearing date respectively on or about the and days of in the year , the indenture of release being made between (*father of vendor*) of the first part, (*mother of vendor*), (therein described as (A. B.), spinster), of the second part, and (*two trustees*) of the third part (being a settlement made previously to, and in contemplation of, a marriage then intended between the said (*father*) and (*mother*), and which was shortly afterwards duly had and solemnized), the hereditaments and premises hereinafter described, and which are intended to be hereby granted and released, were, with other hereditaments and premises, conveyed and assured unto the said (*trustees*) and their heirs to certain uses therein declared (that is to say), until the said intended marriage, to such and the same uses as the said hereditaments and premises then stood limited; and immediately after the solemnization of the said intended marriage, TO THE USE AND INTENT that the said (*mother*), in case she should survive the said

Recital of settlement, by which a rent-charge of 100*l.* was limited to vendor's mother for life, and the lands limited to vendor's father for life, with remainder to trustees to preserve, &c., with remainder to his first and other sons in tail male general.

(*father*), and her assigns should, after his decease, yearly, and every year during the remainder of her natural life, receive out of the said hereditaments and premises the yearly sum of 100*l.* sterling for her jointure, and in lieu or bar of dower, with powers of distress, entry and sale for securing the due payment of the same, and subject thereto, TO THE USE of the said (*father*) and his assigns for and during the term of his natural life, without impeachment of waste, with remainder TO THE USE of the said (*trustees*) and their heirs during the life of the said (*father*), UPON TRUST, to preserve the contingent remainders thereinafter limited, and after his decease, TO THE USE of the first and other sons of the said intended marriage successively, and in remainder one after the other in tail male general, with divers remainders over, with the ultimate remainder TO THE USE of the said (*father*), his heirs and assigns for ever.

Of death of father leaving his widow, and vendor, his heir in tail, him surviving.

AND WHEREAS the said (*father*) died on or about the day of , in the year leaving the said (*mother*), his widow, and the said (*vendor*), the only issue of the said marriage, his heir in tail him surviving, who thereupon entered upon and became tenant in tail (among divers other lands and hereditaments) of the hereditaments and premises hereinafter described, and which are intended to be hereby granted and released.

Of disentailing deed, by which vendor barred the entail.

4. AND WHEREAS by indenture bearing date on or about the day of last, and made between the said (*vendor*) and (*christian name*) his wife, of the one part, and (*trustee to uses*) of the other part, IT IS WITNESSED, that for the purpose of barring the estate tail of the said (*vendor*) in the hereditaments and premises therein, and hereinafter described, and all estates expectant thereon, the said (*vendor*) did thereby grant, release and confirm, and the said (*christian name*) his wife, for the purpose of releasing her right of dower in the same premises, DID thereby remise, release and quit claim unto the said (*trustee to uses*), and his heirs, ALL and singular the hereditaments and premises therein and hereinafter described, and intended to be hereby granted and released; TO HOLD the same, with their appurtenances, unto the said (*trustee to uses*) and his heirs, freed and discharged from all estates tail of the said (*vendor*), and all estates, rights, titles, interests and powers to take effect after, or in

defeasance of such estates tail; To SUCH USES, upon such trusts, and for such ends, intents and purposes as the said (*vendor*) should by deed or deeds appoint, and in default of such appointment, and subject thereto, TO THE USE of the said (*vendor*) and his assigns for the term of his natural life, without impeachment of waste, with a limitation to the use of the said (*trustee to uses*), his executors or administrators, during the life of and in trust for the said (*vendor*) and his assigns, with the ultimate limitation TO THE USE of the said (*vendor*), his heirs and assigns for ever.

Of agreement to purchase.

5. AND WHEREAS the said (*vendor*) a short time since contracted to sell the hereditaments and premises hereinafter described, and the fee-simple and inheritance thereof free from all incumbrances to the said (*purchaser*), for the sum of 4,776*l.*

That the premises so sold forming part of the lands charged with the rent-charge of 100*l.*, vendor had agreed to convey other lands by way of indemnity against the same.

6. AND WHEREAS the said hereditaments and premises so sold and conveyed and assured as aforesaid, formed a portion of the hereditaments comprised in the said hereinbefore recited indenture of settlement, and so as aforesaid charged with the said rent-charge of 100*l.*, payable to the said (*mother*) during her life, and for the purpose of indemnifying the said (*purchaser*) against all claims in respect of the said rent-charge, the said (*vendor*) hath agreed by an indenture intended to bear even date herewith, to convey other lands and hereditaments of him the said (*vendor*) to certain trustees therein named; IN TRUST in the first place to pay and discharge the aforesaid rent-charge, and keep the said hereditaments and premises, intended to be hereby granted and released, effectually exonerated therefrom, and the said (*purchaser*), his appointees, heirs or assigns, fully indemnified from the payment thereof, and all claims and demands in respect of the payment of the same. [INSERT *testatum, by which vendor appoints;* ALSO *further testatum, by which he grants and releases;* ALSO *habendum to uses to bar dower;* ALSO *declaration to debar widow of dower and qualified covenants for title, ut ante,* No. I., clauses 6 to 11 inclusive, pp. iii., iv.]

IN WITNESS, &c.

No. XLIII.

Conveyance in fee to trustees for the purpose of indemnifying a purchaser against a rent-charge charged upon other property sold and conveyed to him by the present grantor.

1. Parties.
2. Recital of conveyance to purchaser.
3. Testatum, by which vendor conveys to trustees.
4. Habendum to uses thereinafter declared.
5. Trustees to receive rent-charge payable quarterly.
6. Power of distress.
7. Power of entry.
8. Ultimate use to vendor.
9. Declaration that rent-charge is so limited as an indemnity against the rent-charge charged upon the purchased premises.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*vendor in last precedent*), of, &c., of the first part; (*two trustees*), of, &c., of the second part; and (*purchaser in the last precedent*), of, &c., of the third part.

Recital of conveyance to purchaser.

2. WHEREAS by indenture of grant and release bearing even date herewith, and made between the said (*vendor*) of the first part, the said (*purchaser*) of, &c., of the second part, and (*purchaser's dower trustee*) of the third part; AFTER RECITING (amongst other things), that the said (*vendor*) had contracted to sell the hereditaments and premises thereinafter described to the said (*purchaser*), free from all incumbrances, for the sum of 4,766*l.*, and that the said hereditaments, being, together with other lands and hereditaments, charged with a rent-charge of 100*l.* payable to the said (*mother*) during her life, secured to her by her marriage settlement, the said (*vendor*) had, for the purpose of indemnifying the said (*purchaser*) against the said rent-charge, agreed to convey other lands and hereditaments of him the said (*vendor*), upon the trusts and in manner thereinafter appearing.

Testatum, by which vendor conveys to trustees.

3. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and in consideration of the sum of 5*s.* sterling, paid by the said (*trustees*) to the said (*vendor*) on the execution hereof, the receipt whereof is hereby acknowledged, HE the

said (*vendor*) DOTH by these presents grant, release and confirm unto the said (*trustees*) and their heirs, ALL, &c. [HERE DESCRIBE *parcels*], AND all rights, members and appurtenances to the said premises belonging or appertaining; AND all the estate, right, title and interest, both legal and equitable, of him the said (*vendor*) therein: TOGETHER with all deeds, evidences and writings relating to the title thereof, in the custody or power of the said (*vendor*), or which he can obtain without suit.

Habendum to uses thereinafter declared.

4. TO HAVE AND TO HOLD the said and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*trustees*), their heirs and assigns, TO THE USES, upon the trusts, and for the ends, intents and purposes, and with, under and subject to the powers, provisoes, declarations and agreements hereinafter expressed and declared (that is to say),

Trustees to receive rent-charge payable quarterly.

5. TO THE USE AND INTENT that the said (*trustees*), their heirs and assigns, shall from henceforth for ever hereafter, have, receive and take one annual sum or yearly rent of 120*l.*, to be yearly issuing out of, and chargeable upon, the said hereditaments and premises hereby granted and released, and to be payable and paid to the said (*trustees*), their heirs and assigns, by four equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, in every year, without deduction; the first quarterly payment to be made on the 25th day of March next.

Power of distress.

6. AND TO THIS FURTHER USE AND INTENT, that in case the said annual sum of 120*l.* shall be in arrear and unpaid in the whole, or in part, by the space of twenty-one days next after any of the days or times whereon the same is hereinbefore appointed to be paid as aforesaid, THEN and in such case, and from time to time so often as the same shall happen, it shall be lawful for the said (*trustees*), their heirs and assigns, into or upon all or any part of the said hereditaments and premises to enter, and then and there to distrain for the said annual sum of 120*l.*, and all arrears thereof, and the distresses there found to dispose of in the same manner, as in the case of rents reserved upon leases for years: TO THE

INTENT, that the said (*trustees*), their heirs and assigns, shall be fully satisfied and paid the said annual sum of 120*l.*, and all expenses incurred by the non-payment thereof.

Power of entry.

7. AND TO THIS FURTHER USE AND INTENT, that in case the said annual sum of 120*l.*, or any part thereof, shall be in arrear or unpaid for the space of twenty-eight days next after any of the days or times whereon the same is hereinbefore appointed to be paid as aforesaid, THEN and in such case, it shall be lawful for the said (*trustees*), their heirs and assigns, and although no legal demand should have been made of the said sum of 120*l.*, into and upon the said hereditaments and premises, or into and upon any parts thereof, in the name of the whole to enter, and the rents and profits thereof to receive and take for their own use and benefit, until they shall be fully satisfied and paid the said annual sum of 120*l.* and all arrears thereof, and so much of the same as shall grow due during such time as they shall continue in possession, and all expenses to be incurred by the non-payment thereof; such possession, when taken, to be without impeachment of waste, and subject to the said annual sum, and the powers thereby given for enforcing payment of the same,

Ultimate use to vendor.

8. TO THE USE of the said (*vendor*), his heirs and assigns for ever.

Declaration that the rent-charge is so limited as an indemnity against the rent-charge charged upon the purchased premises.

9. AND IT IS HEREBY DECLARED AND AGREED, by and between the said parties to these presents, that the said annual sum of 120*l.*, and the said powers and authorities for enforcing the payment thereof, hereinbefore limited to the said (*trustees*), their heirs and assigns, are so limited, IN TRUST to protect, save harmless, and keep indemnified the said (*purchaser*), his heirs, appointees, executors, administrators and assigns respectively, of, from and against the said rent-charge of 100*l.*, so charged upon the said hereditaments and premises comprised in the said indenture bearing even date herewith, by the said hereinbefore recited indenture of settlement, and so payable to the said (*mother*) for her life as aforesaid; and also of and from all distresses, evictions, actions, suits, costs, losses, charges and expenses, which may be made, instituted, prosecuted, paid or borne by the said (*purchaser*), his heirs, executors, administrators or assigns, for or on account of the said rent-charge,

or in relation thereto; and (notwithstanding anything hereinbefore contained), it shall not be lawful for the said (*trustees*), their heirs or assigns, under or by virtue of these presents, to raise and levy all or any part of the said sum of 120*l.* until the said (*purchaser*), his heirs, appointees, executors, administrators or assigns shall by due course of law be compelled to pay the said annuity of 100*l.* so charged upon the said hereditaments and premises so purchased by him as aforesaid, or until the same shall be lawfully levied upon the same premises, or the said (*purchaser*), his heirs, appointees, executors, administrators or assigns, to avoid distress or action, shall pay the same. But if the said rent-charge of 100*l.* shall at any time be so levied or paid as lastly hereinbefore mentioned, THEN and in such case, the said (*trustees*), their heirs and assigns, do and shall from time to time levy and raise such sum and sums of money as will answer and pay the same, or so much thereof as shall be sufficient to pay and satisfy the said (*purchaser*), his heirs, appointees, executors administrators and assigns, the same sums respectively, or so much thereof as shall be so levied as aforesaid; AND ALSO the amount of all expenses incurred in or about the premises; and do and shall pay and apply the moneys so to be raised accordingly. AND subject to the trusts aforesaid, it is hereby declared and agreed, that the payment of the said annual sum of 120*l.*, which shall become due from time to time, shall be considered in equity, and for all beneficial purposes, extinguished in the said lands and hereditaments.

IN WITNESS, &c.

No. XLIV.

Conveyance of a remainder in fee, limited by way of executory devise, to a purchaser, to uses to bar dower, in consideration of stock to be invested in the names of trustees, to be transferred to the vendor upon his contingent estate becoming vested, or to be transferred to the purchaser in case of its failing to take effect.

1. Parties.
2. Recital of will whereby testator devises to wife, subject to limitation over.
3. Of death of testator, and probate of his will.
4. Recital that testator's daughter is unmarried, and of advanced age.
5. Recital of contract to purchase in consideration of £ Three per Cent. Reduced Annuities, to be invested in the names of trustees.
6. Testatum.
7. Habendum to dower uses.
8. Declaration to debar widow of dower.
9. Covenant from vendor that he has good right to convey.
10. For quiet enjoyment, and freedom from incumbrances.
11. For further assurance.
12. Declaration that trustees shall stand possessed of stock, upon trust to pay dividends
13. To vendor during the lifetime of testator's daughter, and, in case of her death in his lifetime, to transfer stock to vendor; but in case vendor shall die in testator's daughter's lifetime, or, surviving her, shall die in the lifetime of any of her issue, then
14. Upon trust for purchaser absolutely.
15. Power to vary securities.
16. Trustees' receipts to be sufficient discharges.
17. Power to change trustees.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 , BETWEEN (*vendor*) of, &c. of the first part, (*purchaser*) of, &c., of the second part, (*purchaser's dower trustee*) of, &c., of the third part, and (*two trustees*) of, &c., of the fourth part.

Recital of will whereby testator devises to wife, subject to limitation over.

2. WHEREAS (J. S.) late of, &c., esq., deceased, by his last will and testament duly executed and attested as by law is required, dated the day of 18 , (amongst certain other devises and bequests, not in anywise affecting the hereditaments and premises hereinafter described and intended to be hereby granted and released), gave and devised such last-mentioned hereditaments and premises unto and to the use of his only daughter (A. B.) and her heirs, but with a proviso that if she should die without leaving any son or child in the lifetime of his nephew the said (*vendor*), then to the use of the said (*vendor*), his heirs and assigns for ever.

3. And whereas the said (*testator*) died on or about the day of 18 , without having altered or revoked his said will, leaving his daughter the said (A. B.), and his nephew the said (*vendor*), him surviving; and his said will was duly proved in the Prerogative Court of the Archbishop of Canterbury by the executors therein named, on or about the day of . Of death of testator, and probate of his will.

4. And whereas the said (A. B.) is upwards of the age of sixty years, and is still unmarried. Recital that testator's daughter is unmarried, and of advanced age.

5. And whereas the said (*vendor*) has contracted to sell his contingent reversionary interest in the said hereditaments and premises unto the said (*purchaser*), in consideration of the sum of £ Three per Cent. Reduced Annuities, to be purchased by the said (*purchaser*), and transferred by him into the joint names of the said (*trustees*), upon the trusts hereinafter expressed and declared, which transfer the said (*purchaser*) hath accordingly made, and the same sum is now standing in the joint names of the said (*trustees*), in the books of the Governor and Company of the Bank of England, as they the said (*trustees*) do hereby testify and acknowledge. Recital of contract to purchase, in consideration of £ Three per Cent. Reduced Annuities, to be invested in the names of trustees.

6. Now this Indenture witnesseth, that in pursuance of the said recited contract, and in consideration of the sum of £ Three per Cent. Reduced Annuities, being so purchased and transferred by the said (*purchaser*) to the said (*trustees*); and also in consideration of the sum of 5*s.* sterling, paid by the said (*purchaser*) to the said (*vendor*) on the execution hereof, the receipt of which is hereby acknowledged, he the said (*vendor*) doth by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, all that the contingent reversionary interest expectant as aforesaid of him the said (*vendor*), of and in all [describe *parcels*]; and also of and in all houses, &c.; and all the estate, right, title and interest, possibility, benefit, claim and demand whatsoever, both legal and equitable, of him the said (*vendor*) therein. Testatum.

7. To have and to hold the said (*short general description*), and all and singular other the premises hereinbefore described, and hereby granted and released, with their appurtenances (subject nevertheless to the pre-existing estate so limited to the Habendum to dower uses.

said (*testator's daughter*) as aforesaid), unto the said (*purchaser*) and his heirs, TO THE USE of such person or persons, and for such estate or estates, and charged and chargeable in such manner as the said (*purchaser*) shall from time to time or at any time by deed or deeds appoint; and in default of such appointment, and so far as any such appointment, if incomplete, shall not extend; TO THE USE of the said (*purchaser*) and his assigns, for and during the term of his natural life, without impeachment of waste; AND immediately after the determination of that estate by any means in his lifetime, TO THE USE of the said (*dower trustee*), his executors and administrators, during the life of the said (*purchaser*), UPON TRUST for the said (*purchaser*) and his assigns; and after the determination of the said hereinbefore lastly limited estate, TO THE USE of the said (*purchaser*), his heirs and assigns for ever.

Declaration to debar widow of dower.

8. AND the said (*purchaser*) hereby declares that no woman becoming his widow shall be entitled to dower out of the said hereditaments and premises, or any part thereof.

Covenant from vendor that he has good right to convey.

9. AND the said (*vendor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act, deed, matter or thing whatsoever, done or permitted by him the said (*vendor*) or the said (*testator*), deceased, to the contrary) he the said (*vendor*) now hath in himself good right, full power and lawful and absolute authority to release and convey the said hereditaments and premises, subject as aforesaid, to the uses and in manner aforesaid, according to the true intent and meaning of these presents.

For quiet enjoyment and freedom from incumbrances.

10. AND ALSO that (notwithstanding any such act, deed, matter and thing as aforesaid) the same hereditaments shall, subject as aforesaid, be held and enjoyed according to the limitations hereinbefore declared concerning the same. AND THAT freely, clearly and absolutely saved harmless and kept indemnified by the said (*vendor*), his heirs, executors or administrators, of and from all former and other estates, rights, titles, liens, charges and incumbrances whatsoever made or created by the said (*vendor*) or the said (*testator*), deceased, or any other person or

persons whomsoever rightfully claiming under him or them (save and except the contingent estate or interest of the said (A. B.) so limited to her as aforesaid.)

11. And moreover, that the said (*vendor*) and all persons rightfully claiming any estate or interest, legal or equitable in the said hereditaments and premises, under and in trust for him, or the said (*testator*), deceased, other than and except the said (A. B.), and persons rightfully claiming under her, shall and will from time to time and at all times hereafter, at the request and costs of the said (*purchaser*), his appointees, heirs or assigns, make, do, acknowledge, enter into, execute and perfect, or cause or procure to be made, done, acknowledged, entered into, executed and perfected, all such lawful acts, deeds, conveyances and assurances in the law whatsoever, for the more perfectly or satisfactorily conveying or assuring the said hereditaments and premises to the uses aforesaid, and subject as aforesaid, according to the true intent and meaning of these presents, as the said (*purchaser*), his appointees, heirs or assigns, or his or their counsel in the law shall require, and as shall be tendered to be done and executed. For further assurance.

12. And it is hereby declared and agreed by and between the said parties hereto, that the said (*trustees*) and the survivor of them, his executors or administrators, do and shall stand possessed of the said sum of £ , Three per Cent. Reduced Annuities, so transferred to and standing in their names as aforesaid, upon trust yearly and every year, during the natural life of the said (*testator's daughter*), to pay the interest, dividends and annual produce thereof, as and when the same shall accrue due, unto the said (*vendor*) and his assigns, and in case the said (*testator's daughter*) shall happen to die in the lifetime of the said (*vendor*) without leaving any child, children or other lawful issue her surviving, then Declaration that trustees shall stand possessed of stock upon trust to pay dividends to vendor during the lifetime of testator's daughter, and in case of her death in his lifetime, to transfer stock to vendor;

13. Upon trust, to transfer the said sum of £ , Three per Cent. Reduced Annuities, unto and into the name of the said (*vendor*), his executors, administrators and assigns, to and for his and their own use and absolute benefit; but in case the said (*vendor*) shall die during the lifetime of the said (*testator's daughter*), or surviving her, shall happen to die during the lifetime of any child, children or but in case vendor shall die in testator's daughter's lifetime, or surviving her, shall die in the

lifetime of any of her issue, then

other lawful issue of her the said (*testator's daughter*), then UPON TRUST, that they the said (*trustees*) or the survivor of them, his executors or administrators, do and shall stand and be possessed of the said sum of £ , Three per Cent. Reduced Annuities,

upon trust for purchaser absolutely.

14. UPON TRUST for the said (*purchaser*), his executors, administrators and assigns, and to transfer the said sum of £ , Three per Cent. Reduced Annuities, unto and into the name of the said (*purchaser*), his executors, administrators and assigns, to and for his and their own absolute use and benefit, and to, for and upon no other trust, end, intent or purpose whatsoever, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

Power to vary securities.

15. PROVIDED ALWAYS, and it is hereby further declared and agreed by and between the said parties hereto, that it shall be lawful for the said (*trustees*) and the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, with the consent in writing of the said (*vendor*) or his assigns, and of the said (*purchaser*), his executors, administrators or assigns, to sell out and dispose of the said sum of £ , Three per Cent. Reduced Annuities, and invest the produce in the names of the said (*trustees*) or the survivor of them, his executors or administrators, in or upon any other Government or Parliamentary stocks or funds of Great Britain, or at interest upon good and sufficient freehold, leasehold or copyhold estates in England, and not in Ireland, and so from time to time to vary such stocks, funds and securities wherein the produce of the said trust premises shall from time to time be invested; and do and shall stand and be possessed thereof upon the trusts hereinbefore declared of and concerning the said sum of £ , Three per Cent. Reduced Annuities, and the interest, dividends, and annual produce thereof respectively.

Trustees' receipts to be sufficient discharges.

16. AND IT IS HEREBY FURTHER DECLARED AND AGREED, by and between the said parties hereto, that the receipt or receipts in writing of the trustees or trustee for the time being of these presents, shall be an effectual discharge for the moneys from time to time to be called in, or to arise from the sale or other disposition of any such stocks, funds or secu-

destroying the estate tail of the said (*remainder man*), and all estates, rights, interests and powers to take effect after or in defeasance of such estates tail, and to limit the same to the uses thereinafter expressed, the said (*tenant for life*) did grant and convey, and the said (*remainder man*) (with the consent of the said (*tenant for life*), as the protector of the said settlement, testified as therein mentioned), did grant, release and confirm unto the said (*trustee to uses*) and his heirs, the hereditaments and premises hereinafter described, TO HOLD the same with their appurtenances, unto the said (*trustee to uses*) and his heirs, to such uses as the said (*tenant for life*) and (*remainder man*) should from time to time or at any time by deed or deeds appoint, and in default of such appointment, TO THE USE of the said (*tenant for life*) and his assigns for life, without impeachment of waste, with remainder TO THE USE of the said remainder man, his heirs and assigns for ever.

Of mortgage by appointment.

3. AND WHEREAS by indenture dated on or about the day of , and made between the said (*tenant for life*) of the first part, the said (*remainder man*) of the second part, and the said (*mortgagee*) of the third part: IT IS WITNESSED that, in consideration of 3,300*l.* paid by the said (*mortgagee*) to the said (*tenant for life*) and (*remainder man*), the said (*tenant for life*) and (*remainder man*), in exercise of the power limited to them by the said hereinbefore recited indenture, did, by the now reciting indenture, absolutely and irrevocably appoint that all and singular the hereditaments therein and hereinafter described, should from thenceforth be TO THE USE of the said (*mortgagee*), his heirs and assigns for ever; but subject to a proviso for redemption and reconveyance, on payment by the said (*tenant for life*) and (*remainder man*) to the said (*mortgagee*), his executors, administrators or assigns, of the sum of 3,300*l.* and interest, at the rate of 5*l.* for every 100*l.* by the year, at the time and in manner therein mentioned, but in payment whereof default was made.

Of contract to sell.

4. AND WHEREAS the said (*tenant for life*) and (*remainder man*) have contracted to sell the fee simple and inheritance of the said hereditaments and premises, free from all incumbrances (except as hereinafter mentioned) unto the said (*purchaser*), in consideration

of an annuity or yearly rent-charge of 150*l.* to be paid to the said (*tenant for life*), and to be charged upon the said hereditaments and premises during the remainder of the life of the said (*tenant for life*), and of the sum of 7,300*l.* to be paid by the said (*purchaser*) in manner hereinafter appearing.

That principal money is still due upon the mortgage security, but that all interest has been punctually paid.

5. AND WHEREAS the said sum of 3,300*l.* still remains due and owing to the said (*mortgagee*), upon his said recited mortgage security, but all interest for the same has been duly paid up to the day of the date hereof, as the said (*mortgagee*) doth hereby testify and acknowledge.

Testatum.

6. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the said annuity or yearly rent-charge of 150*l.* sterling, secured to be paid to the said (*tenant for life*) and his assigns, during the term of his life, as hereinafter mentioned; ALSO, in consideration of the sum of 3,300*l.* sterling, paid by the said (*purchaser*) to the said (*mortgagee*), on the execution hereof (at the request and by the direction of the said (*tenant for life*) and (*remainder man*), testified by their being parties hereto and concurring herein), the receipt of which, and that the same is in full satisfaction and discharge of all moneys owing to him upon his said recited mortgage security, the said (*mortgagee*) hereby acknowledges, and therefrom doth, by these presents release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors and administrators, and also the said (*tenant for life*) and (*remainder man*), and each of them, their, and each of their heirs, executors, administrators and assigns respectively; ALSO, in consideration of the sum of 4,000*l.* sterling, at the same time as aforesaid paid by the said (*purchaser*) to the said (*remainder man*) (with the privity and approbation of the said (*tenant for life*), testified as aforesaid), the payment and receipt of which two several sums of 3,300*l.*, and 4,000*l.*, making together the sum of 7,300*l.*, the said (*tenant for life*) and (*remainder man*), hereby acknowledges and therefrom DO, and each of them DOTH, by these presents, release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns; AND ALSO, in consideration of 5*s.* sterling, at the same time as aforesaid paid by the said (*purchaser's trustee*), to the said (*tenant for life*) and

rities aforesaid, and shall exonerate the persons paying the same from all responsibility with respect to the application thereof.

Power to change trustees.

17. PROVIDED ALWAYS, and it is hereby moreover declared and agreed by and between the said parties hereto, that in case of the death, continued residence abroad, neglect, refusal or incapacity or either of them the said (*trustees*), or of any trustee or trustees to be appointed in his or their stead or place, it shall be lawful for the acting trustee or trustees for the time being of these presents, with the consent in writing of the said (*vendor*) or his assigns, and of the said (*purchaser*), his executors, administrators or assigns, to appoint a new trustee or trustees in the place or stead of such trustee or trustees so dying, or continuing to reside abroad, neglecting, refusing or becoming incapable to act as aforesaid, and thereupon the said trust estate and premises shall be forthwith transferred and assigned, in such manner as that the same may vest in such new trustee or trustees, either jointly with the surviving or continuing trustee or trustees, or solely as the case may require, and in his, her or their executors, administrators or assigns, upon the trusts and for the ends, intents and purposes hereinbefore declared; and that every such new trustee or trustees, either before or after such assignment and transfer, shall and may have and exercise the same powers as if he or they had been originally appointed a trustee or trustees by these presents; and that no trustee to be appointed as aforesaid, shall be responsible for the acts, deeds or defaults of any co-trustee or co-trustees, nor for involuntary losses, nor for money received under receipts in which they shall join only for conformity; and that the present or any future trustees shall and may reimburse themselves and each other, out of the trust moneys that may come to their respective hands, by virtue of these presents, all costs, charges and expenses to be incurred by them in the execution of the aforesaid trusts or in relation thereto.

IN WITNESS, &c.

No. XLV.

Conveyance to a purchaser in fee to dower uses by tenant for life and remainder man, with the concurrence of the mortgagee, part of the consideration being a rent-charge limited to the tenant for life, with usual powers for securing the payment thereof.

1. Parties.
2. Recital of disentailing deed.
3. Of mortgage by appointment.
4. Of contract to sell.
5. That principal money is still due upon the mortgage security, but that all interest has been punctually paid.
6. Testatum.
7. Habendum to purchaser's trustee.
8. To the use and for the intent that tenant for life shall receive a yearly rent-charge of 150*l.* for life.
9. Power of distress.
10. Power of entry.
11. Limitation to trustee for tenant for life for ninety-nine years, if tenant for life shall so long live.
12. Limitations to dower uses.
13. Declaration of trust of term to secure annuity.
14. Receipt of trustee to be a sufficient discharge.
15. Covenant from purchaser to pay rent-charge.
16. Covenant from tenant for life and remainder man that they have good right to convey.
17. For quiet enjoyment, and freedom from incumbrances.
18. For further assurance.
19. Covenant from mortgagee that he has done no act to incumber.

Parties.

1. THIS INDENTURE, made the day of , A.D. 18 , BETWEEN (*mortgagee*) of, &c., of the first part, (*tenant for life of equity of redemption*) of, &c., of the second part, (*remainder man in fee*) of, &c., of the third part, (*purchaser*) of, &c., of the fourth part, (*purchaser's trustee*) of, &c., of the fifth part, and (*trustee for tenant for life*), of the sixth part.

Recital of disentailing deed.

2. WHEREAS by indenture dated on or about the day of , and made between the said (*tenant for life*) of the first part, the said (*remainder man*) of the second part, and (*trustee to uses*) of the third part, AFTER RECITING that the said (*tenant for life*) was tenant for life of the hereditaments and premises therein and thereinafter described, with remainder to the said (*remainder man*) in tail male general, with divers remainders over: IT IS WITNESSED, that for the purpose of barring and

(*remainder man*), the receipt whereof is hereby acknowledged, HE the said (*mortgagee*) (at the request and by the direction of the (*tenant for life*) and (*remainder man*), testified as aforesaid), DOTH by these presents grant, release and convey, the said (*tenant for life*) DOTH by these presents release, and the said (*remainder man*) DOTH by these presents release and confirm unto the said (*purchaser's trustee*) and his heirs, ALL [HERE DESCRIBE *the parcels*], together with all and singular houses, outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, ways, paths, passages, water, water-courses, sinks, sewers, gutters, drains, timber and other trees, woods, underwoods, and the ground-soil thereof, common of pasture and turbary, and all other commonable rights whatsoever; hedges, ditches, fences, mounds, bounds, liberties, lights, easements, rights, members and appurtenances to the said hereditaments and premises belonging, or usually held or enjoyed therewith, AND all the estate, right, title and interest, both legal and equitable, of them the said (*mortgagee*), (*tenant for life*), and (*remainder man*) therein; AND also all deeds, evidences and writings relating to the title thereof, in the possession of the said (*tenant for life*), (*remainder man*) or (*mortgagee*), or either of them, or which they, or either of them, can procure without suit.

Habendum to purchaser's trustee.

7. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*purchaser's trustee*) and his heirs; TO THE USES, upon the trusts, and for the ends, intents and purposes hereinafter limited, expressed and declared, of and concerning the same (that is to say),

To the use and intent that tenant for life shall receive a yearly rent-charge of 150*l.* for life.

8. TO THE USE AND INTENT that the said (*tenant for life*), and his assigns, shall and may yearly and every year, during the term of his natural life, receive and take one annuity or yearly rent-charge of 150*l.*, to be issuing and payable out of, and charged and chargeable upon the said hereditaments and premises, hereby granted and released, free from all deductions (except the present or any future tax on property or income), and to be paid by the said (*tenant for life*), by four equal quarterly payments on the 25th day of

March, the 24th day of June, the 29th day September, and the 25th day of December; the first quarterly payment to be made on the 24th day of June next.

Power of distress.

9. AND TO THIS FURTHER USE AND INTENT, that, in case any quarterly payment of the said annuity or yearly rent-charge of 150*l.*, or any part thereof, shall at any time or times be in arrear and unpaid for the space of fourteen days next after any of the days whereon the same ought to be paid, then and in such case, and so often as the same shall happen, it shall be lawful for the said (*tenant for life*) or his assigns, during the term of his natural life, into and upon all and singular the said hereditaments and premises, or into and upon every part thereof to enter and distrain, and the distress and distresses then and there found to take, lead, drive away and impound, and in pound to detain and keep, until the said annuity or yearly rent-charge of 150*l.*, and all arrears thereof, together with the costs incurred in keeping such distress or distresses, shall be fully paid and satisfied; and in default of payment thereof, or any part thereof respectively, in due time after such distresses shall be so taken, to appraise, sell and dispose of such distress or distresses, or otherwise to act therein according to due course of law, in like manner as in cases of distress for non-payment of rent reserved upon common leases; TO THE INTENT that thereby and therewith, the said (*tenant for life*) and his assigns may be fully paid and satisfied the said annuity or yearly rent-charge of 150*l.*, and all costs and expenses attending the non-payment and recovery of the same.

Power of entry.

10. AND TO THIS FURTHER USE AND INTENT, that, in case any quarterly payment of the said annuity or yearly rent-charge of 150*l.*, or any part thereof, shall, at any time or times be in arrear and unpaid, for the space of twenty-eight days next after any of the days whereon the same ought to be paid as aforesaid (although no formal or legal demand shall be made), it shall be lawful for the said (*tenant for life*) and his assigns, during the term of his natural life, into and upon all and singular the said hereditaments and premises, or into or upon any part thereof in the name of the whole to enter, and the same with the appurtenances to hold and enjoy, and

the rents, issues and profits thereof to receive and take, to and for his and their own use and benefit, until he or they shall thereby and therewith, or by any other means, be fully paid and satisfied the said annuity or yearly rent-charge of 150*l.*, and all arrears thereof, and such arrears of the same as shall grow during the time that he or they shall by virtue of such entry or entries be in possession of the said hereditaments and premises, or any part thereof, together with all such costs as shall be incurred by the non-payment or recovery of the same, or any part thereof, or in relation thereto; such possession when taken to be without impeachment of waste.

Limitation to trustee for tenant for life, for ninety-nine years, if tenant for life shall so long live.

11. AND AS TO, FOR AND CONCERNING the said hereditaments and premises (so subject and charged with the said annuity or yearly rent-charge of 150*l.*, and the remedies for the recovering and enforcing payment of the same), TO THE USE of the said (*trustee for tenant for life*), his executors, administrators and assigns, for and during the term of ninety-nine years henceforth next ensuing, upon the trusts, and for the ends, intents and purposes hereinafter expressed and declared of and concerning the same; and after the expiration or sooner determination of the said term of ninety-nine years, and in the meantime subject thereto,

Limitations to dower uses.

12. TO SUCH USES, upon such trusts, and for such ends, intents and purposes, and charged and chargeable in such manner and form as the said (*purchaser*) shall from time to time or at any time by deed or deeds appoint. [CONTINUE *declaration of uses as in last precedent*, clause 7. ADD *also declaration to debar widow of dower, ut ib.*, clause 8.]

Declaration of trust of term to secure annuity.

13. AND AS TO, FOR AND CONCERNING the said term of ninety-nine years, hereinbefore limited to (*trustee for tenant for life*) his executors, administrators and assigns, determinable as aforesaid, it is hereby declared and agreed, that the same is so limited to him, UPON TRUST, that in case any quarterly payment of the said annuity or yearly rent-charge of 150*l.*, or any part thereof, shall be unpaid for the space of forty days next after any of the days whereon the same ought to be paid as aforesaid (although no formal or legal demand shall be made), then and so often as the same shall happen, the said (*trustee for tenant for life*), his executors, administra-

tors or assigns, do and shall from time to time, by and out of the rents, issues or profits of the said hereditaments and premises, or by demising, leasing, selling or mortgaging the same, or any part thereof, for all or any part of the said term of ninety-nine years, or by bringing actions against the tenants or occupiers of the said premises, or any of them, for the rents then in arrear, or by such other ways and means as to him or them shall seem meet, raise and levy such sums and sum of money as shall be sufficient from time to time to pay and satisfy such arrears of the said annuity or yearly rent-charge of 150*l.*, or so much thereof as shall from time to time happen to be in arrear, together with all such costs, charges and expenses as the said (*tenant for life*), or his assigns, or the said (*trustee for tenant for life*), his executors, administrators or assigns, shall pay or sustain for or by reason of the nonpayment of the said annuity or annual rent-charge of 150*l.*, at the days and times and in manner hereinbefore appointed for payment thereof; and do and shall pay, apply and dispose of the money so to be levied and raised, in and towards the payment and satisfaction thereof accordingly. AND SUBJECT and without prejudice to the aforesaid trusts, do and shall stand and be possessed of the said hereditaments and premises for the residue of the said term of ninety-nine years, and of the rents and profits thereof, or so much of the same as shall then be undisposed of for the purposes aforesaid, UPON TRUST for the said (*purchaser*), his heirs and assigns.

Receipt of trustee to be a sufficient discharge.

14. AND IT IS HEREBY DECLARED AND AGREED by and between the said parties to these presents hereto, that the receipt or receipts in writing of the said (*trustee for tenant for life*), his executors, administrators or assigns, shall be a sufficient discharge for any sum or sums of money which shall come to his or their hands by virtue of these presents, and shall effectually exonerate the person or persons paying the same for so much money as in such receipt or receipts shall be expressed to be received, and also from all responsibility with respect to the loss, misapplication or nonapplication thereof or of any part thereof.

Covenant from purchaser to pay rent-charge.

15. AND the said (*purchaser*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*tenant for life*) that he the said (*purchaser*), his heirs, executors or administrators, shall

and will from time to time and at all times during the natural life of the said (*tenant for life*), well and truly pay or cause to be paid unto the said (*tenant for life*) and his assigns, the said annuity or yearly rent-charge of 150*l.*, free from all deductions (except the present or any future tax on property or income), on the respective days and times, and in manner hereinbefore appointed for payment thereof.

Covenant from tenant for life and remainder man that they have good right to convey.

16. And the said (*tenant for life*) and (*remainder man*) do hereby for themselves, their heirs, executors and administrators, jointly and severally covenant with the said (*purchaser's trustee*) and his heirs, that (notwithstanding any act done or permitted by them or either of them to the contrary,) they the said (*mortgagee*), (*tenant for life*), and (*remainder man*), or some or one of them, now have or hath in themselves or himself, good right, full power and lawful and absolute authority, to limit and assure the said hereditaments and premises, with their appurtenances, to the uses and in manner aforesaid, according to the true intent and meaning of these presents.

For quiet enjoyment.

17. And also, that (notwithstanding such act or thing as aforesaid,) the said hereditaments and premises shall from time to time and at all times be peaceably and quietly held and enjoyed according to the uses hereinbefore declared concerning the same, without let, suit, eviction, ejection, interruption, molestation, or denial, from or by the said (*mortgagee*), (*tenant in tail*), or (*remainder man*), or any other person or persons whomsoever rightfully claiming under or in trust for them, or either of them; and that freely, clearly, and absolutely indemnified by the said (*tenant in tail*) and (*remainder man*), their or either of their heirs, executors or administrators, of and from all former and other estates, rights, titles, liens, charges and incumbrances whatsoever, made, created, occasioned or suffered by the said (*tenant in tail*), or (*remainder man*), or any other person or persons whomsoever rightfully claiming under or in trust for him, or by or through their or either of their acts, deeds, defaults, privity or procurement

Freedom from incumbrances.

For further assurance.

18. And moreover that the said (*tenant in tail*), and (*remainder man*), and all persons rightfully claiming any estate or interest, legal or equitable, in the said hereditaments and premises, or

any part thereof, under or in trust for him, will from time to time and at all times hereafter, at the request and costs of the said (*purchaser*), his appointees, heirs or assigns, enter into, execute and perfect all such further acts, deeds, conveyances and assurances whatsoever, for the more perfectly or satisfactorily assuring the said hereditaments and premises, and every or any part of the same, with their appurtenances, to the uses aforesaid, according to the true intent and meaning of these presents, as the said (*purchaser*), his appointees, heirs or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed.

Covenant from mortgagee that he has done no act to incumber.

19. And the said (*mortgagee*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*) and his heirs, that he the said (*mortgagee*) hath not made, done, committed, or permitted any act, deed, matter or thing whatsoever, whereby or by reason or means whereof the hereditaments and premises hereby granted and released, or any of them, or any part of the same, can be impeached, charged, incumbered, or prejudicially affected in any manner howsoever.

In witness, &c.

No. XLVI.

Declaration from a vendor that the property is unincumbered, and that he has done no act to incapacitate himself from selling the property.(*a*)

I, (*vendor*), of, &c., do solemnly and sincerely declare, that [HERE DESCRIBE *parcels*,] which I have contracted to sell to the said (*purchaser*), of, &c., for the sum of £ , have not, nor hath any part thereof at any time been in any way settled, charged or incumbered by me, (*b*) and the same premises are free and clear of and from all settlements, agreements, or articles to settle, conveyances, mortgages, (*c*) leases, annuities, rent-charges, rents, judg-

---

(*a*) In some parts of the kingdom, and particularly in the West of England, a practice has sprung up among the profession of requiring the vendor to sign a declaration against incumbrances. It is doubtful, however, whether a purchaser has any right to insist upon this being done; at the same time, if it could be universally established and carried out in practice, it would afford a beneficial protection to purchasers. The above form has been frequently adapted to this purpose.

(*b*) If the property is to be sold subject to any incumbrances, then set out the nature of such incumbrance; as, for example,

"excepting a mortgage thereof to A. B., of, &c., gentleman, for the term of 1,000 years, to secure £ and interest."

Or,

"excepting a certain quit rent of £ payable to ," &c.

(*c*) If the property is to be sold subject to a mortgage, add here—

"excepting the hereinbefore mentioned mortgage,"

and in the same manner refer to any other incumbrance, subject to which it is intended that the property shall be conveyed.

ments, extents, crown or other debts, liens, charges and incumbrances whatsoever. AND I FURTHER solemnly and sincerely declare that I have not at any time or times heretofore committed any act of bankruptcy, nor been adjudged a bankrupt, nor hath any commission or fiat in bankruptcy been at any time issued against me, nor have I at any time or times heretofore taken the benefit of any act or acts of Parliament for the relief of Insolvent Debtors, nor made nor executed any conveyance or assignment to or in trust for the benefit of any creditors. AND I FURTHER solemnly and sincerely declare, that there are no judgments, annuities or crown debts outstanding against me, whereby the said [INSERT *general description of property*,] now contracted to be sold, and now about to be conveyed by me to the said (*purchaser*), his heirs or assigns, (*d*) have become, may now, or hereafter be rendered subject or liable to, or to the discharge thereof, or whereby, or by reason or means whereof the said premises, or any part thereof, are, is, can, shall, or may be impeached, charged, incumbered, or prejudicially affected in any manner howsoever.

DECLARED and subscribed by the said (*vendor*), this day of 185 .

A. B., a Master Extraordinary in Chancery.

(*d*) If the property be leasehold for years, for "heirs and assigns," substitute—

"executors, administrators and assigns."

INDEX TO CASES.

VOLS. I. AND II.

PAGE

A.

Abbot *v.* Gibbs, ii. 84
Abdy *v.* Loveday, ii. 107
Abergavenny (Lord) *v.* Thomas, ii. 38
Abney *v.* Miller 388
Abrahall *v.* Bubb 476, 478
Abraham *v.* Twig 313
Acherley *v.* Vernon, 386, 442, 443
Achison *v.* Dickson 479
Ackland *v.* Luttey 512
Ackroyd *v.* Simpson 389
Adair *v.* Shaw.. 215
Adams *v.* Pierce 555
——— Terre Tenants of Savage 467
——— Weare, ii. 243
Adderley *v.* Clavering .. 536, 537
Addison (by Committee) *v.* Dawson 157
——— *v.* Mascal 162
Addy *v.* Grise 421
Adney *v.* Field 492
Aislabie *v.* Rice 371, 270
Albany *v.* Case, ii. 75, 77
Alderman *v.* Neat 508
Aldrich *v.* Cooper, ii. .. 6, 80
Alexander *v.* Alexander ..371, 390
Allam *v.* Heber 457
Allen *v.* Allen 348
——— Anthony, ii. .. 114, 127
——— Beach, ii. 4
——— Bennett 51, 91
——— Hilton.. 534
——— Nash, ii. .. 31, 34, 51
——— Papworth 165
——— Patsall, ii. 32
——— Poulton, ii... .. 14, 50
Alley *v.* Deschampes, ii...237, 259
Alsop *v.* Oxford (Lord), ii. .. 125

PAGE

Alsop *v.* Pyne 488
——— Wringley 554
Alston *v.* Alston 476
Altham *v.* Anglesea (Earl of) 290
Ambrose *v.* Ambrose .. 52, 387
Amby *v.* Gower 330
Amcoth *v.* Catherick, ii... .. 198
Amherst *v.* Lytton 371
Andrew *v.* Andrew, ii. 268
——— Southouse .. 310, 323
——— Wrigley, 557; ii. 85, 120
Andrews, *Ex parte* 235
——— *v.* Emerson 64
——— Fulham 370
——— Waller, ii. 54
Annandale *v.* Brazier 467
Anon. 2 Mod. 7 373
—— Vent. 631 .. ..386, 387
—— 1 Salk. 153 219
—— 2 Freem. 65 .. ii. 29
—— 2 Freem. 106 .. ii. 138
—— 2 Leon. 220 .. ..329, 332
—— 1 Com. 345 388
—— Cro. Eliz. 131 359
—— 12 Mod. 10 72
—— Bunb. 35 108
—— 3 Atk. 313 210
—— Dalison 106, ca. 56 .. 329
—— 6 Ves. 513, 518 65
—— 3 Mad. 494 55
—— 1 Mod. 180 512
—— 6 Ves. 470 84
—— Moore, 38 507
—— 2 Dy. 371 c. 329, 332
—— Ow. 45 503
Apothecary's Company *v.* Jerneyhough, ii. 306
Appleton *v.* Binks 44
Appleyard *v.* Wood, ii. 49
Archer's case 172
Ardsorfe *v.* Bennett, ii. 50

PAGE

Arlet *v.* Ellis, ii. 7
Arminter's case 307
Armstrong *v.* Eldridge 361
——————— Wolsey 287
Arnitt *v.* Bream 512
Arnold *v.* Bidgood 554
Arnot *v.* Bigle, ii. 107
——— Briscoe, 132; ii. .. 250
Arthur *v.* Bockenham 153
——— Vanderbank 321
Ash *v.* Boyle, ii. 41
Ashburnham *v.* Bradshaw .. 439
——————— St. John, ii... 82
Ashby *v.* Doyle 330
Ashfield *v.* Ashfield 163
Ashley *v.* Baillie, 40; ii. .. 119
Ashlin *v.* Whyte 26
Ashton *v.* Ashton 372
——— Curzon, ii. 113
Ashurst *v.* Mingay 521
Aspinall *v.* ——— 467
Aston *v.* Aston, 346; ii... .. 113
——— Hutton, ii. 24
Astrey *v.* Astrey 390
Atham *v.* Anglesea 173
Atkins *v.* Hiccocks 374
Atkinson *v.* Baker 471, 472
——— ——— Hutchinson .. 547
——————— Ritchie 519
Attorney-General *v.* Andrews, ii. 49, 50
——————— Backhouse, ii. 113
——————— Bains 424
——————— Bowyer .. 389
——————— Christ's Hospital, ii. 98
——————— Day, 81, 82, 84, 86
——————— Downing .. 443
——————— Gill 318
——————— Glegg 331
——————— Gower, 21; ii. 113, 119
——————— Lloyd 438
——————— Mott, ii. .. 54
——————— Parnther, 160, 161
——————— Risby, ii. .. 78
——————— Sawtell, ii... 48
——————— Scott 292
——————— Silwell, ii. .. 131
——————— Sutton, 303, 354
——————— Vigors, 394; ii. 52
——————— Ward 440
Attree *v.* Scott, ii. 25
Attridge, *Re* 425

PAGE

Aubrey *v.* Fisher 36
Auncelme *v.* Auncelme, ii. .. 23
Auriol *v.* Mills 321
Austen *v.* Taylor 347
Avelyn *v.* Ward 370
Aylesford's (Earl of) case .. 83
Aylett *v.* Ashton, ii. 139
Ayliffe *v.* Murray 233
Ayres *v.* Willis 331

B.

Babington *v.* Greenwood .. 381
Back *v.* Andrews 224
Backhouse *v.* Crosby 92
——————— Wells.. 351
Baddeley *v.* Leapingwell .. 323
Badin *v.* Pembroke (Earl of), ii. 170
Badger *v.* Ford, ii... .. ..7, 10
——— Lloyd 456
Bagster *v.* Portsmouth (Earl of) 158
Bagwell *v.* Dry 359
Bailey *v.* Corporation of Leominster 534
——— Ekins, ii. 84
Baillis *v.* Gale 307, 308, 310
Baker *v.* Dewey, ii. 175
——— Hucking 394
——— Jennings, ii. 54
——— Raymond 311
——— Reynolds 72
——— Sutton, ii. 111
——— Willis.. .. .. 180, 220
Bakie *v.* Chandless, ii. 136
Baldwin *v.* Rochfort, ii... .. 98
——————— Sneyd 458
Balfour *v.* Welland, 219; ii... 84
Ballard *v.* Way, 13; ii... .. 241
Bally *v.* Wells.. .. .. 523, 526
Balmanno *v.* Lumley, ii. .. 139
Bambridge *v.* Whitton, ii. .. 34
Bamfield *v.* Popham 353
Banks *v.* Denshaw, ii. 54
Barber *v.* Mackintosh 234
Barclay *v.* Raine, 6, 525; ii. 208
Bark *v.* Zouch.. 401
Barker *v.* Damer 21
——— Devonshire (Duke of), 219, 259; ii. 85
——— Giles 360
——— Hill, ii. 229
——— Keate, 282, 514; ii. 166
——— Smark, ii. 316

	PAGE
Barker *v.* Taylor, ii.	34
Barnard *v.* Godscall	520, 521
——— Plumfret, ii.	114
Barnes *v.* Allen	359
——— Corke, ii.	24
——— Crowe	443
——— Mawson	248
Barney *v.* Beake, ii.	244
Barnfather *v.* Jordan	230, 524
Barnwell *v.* Harris, ii.	139
Barrell *v.* Sabine, ii.	319
Barrett *v.* Gomesena	83
Barrington *v.* Attorney-General	219
——— Horne	167
Barry *v.* Barrymore (Lord)	51
——— Edgeworth	307
——— Nugent	508
——— Wade	167
——— Young	105
Bartlett *v.* Pickersgill	387
——— Tuchin, ii.	250
Barton *v.* Barton	312
——— Glover	105
Bassett *v.* Nosworthy, ii.	113
Batchelson *v.* Gage	520
Bateman *v.* Phillips	92, 110
——— Roach	325, 326
Bate's case	408, 539
Bateson *v.* Green, ii.	7
Bath and Montague's case, 221; ii.	54
——— (Earl of) *v.* Abney, ii.	24
Batmore *v.* Greaves, ii.	24, 25
Batry *v.* Lloyd, ii.	244
Baugh *v.* Haynes	488, 494
Baxter *v.* Abrahall	508
——— Dowdeswell, ii.	11
——— Dyes	399, 403
Bayley *v.* Warburton	165, 166
Baylis *v.* Dineley	163, 505
Baynham *v.* Guy's Hospital	532, 533
Beachcroft *v.* Beachcroft	306
Beadley, *Re*	422
Beal *v.* Shepherd, ii.	15, 34
Beale *v.* Phillips	541
——— Thompson	519
Bear's case	458
Beauclere *v.* Dormer	545
Beaudley *v.* Brooke	284
Beaumont *v.* Bramley, ii.	188
——— Dukes	48
———'s case	220
Becket *v.* Cordley, ii.	108
Beckford *v.* Beckford	224
Beckford *v.* Parnecott	442
Beckwith's case	287
Bedford's case	490
Bedwell *v.* Frome	285
Beed *v.* Blandford, ii.	257
Beete *v.* Bigwood	47
Beezley *v.* Waterhouse	325
Belch *v.* Harvey	210, 211
Belfour *v.* Weston	520
Bellamy *v.* Burrow	387
Bellasses *v.* Ermine	373
——— Hester	512
Belworth *v.* Hassel	26
Benger *v.* Benger	224
——— Drew, ii.	36
Benjamin *v.* Porteus	55
Bennett College *v.* Carey, ii.	269
———, *Ex parte*	233, 235, 388
——— *v.* Ingoldsby, ii.	126
——— Lewknor	294, 545
——— Tankerville, 294, 335, 340, 402,	446
——— Womack	14, 527
Bennett's case	415
Bennington *v.* Beechey, ii.	113
Benson *v.* Hodson	172
——— Scott, 169; ii. 4, 22,	32, 51
Bentall *v.* Burn	79
Bentham *v.* Wiltshire	330
Berkeley *v.* Daugh	17
Berrisford *v.* Milward, ii.	107
Berry *v.* Green, ii.	21
——— Rich	193
——— Taunton	187
——— Wade	167
——— Young, 6, 228; ii.	229, 230
Bessonet *v.* Robins	21
Bibb *v.* Thomas	434
Bibin *v.* Walker	320
Bickley *v.* Guest, ii.	277
Biederme *v.* Seymour	459
Binks *v.* Rokeby (Lord), 102, 479; ii.	239
Binstead *v.* Coleman	83
Birch *v.* Birch	423
Bird *v.* Christopher, ii.	75
——— Le Fevre, 6; ii.	229
Birde *v.* Stride	221
Birmingham *v.* Kirwan	380
Biscoe *v.* Cartwright, ii.	53
——— Wilks, ii.	270
Bishop *v.* De Burgh	178
Bixley *v.* Eley, ii.	54
Blackborough *v.* Greaves, ii.	24

PAGE
Blackburn *v.* Greaves, ii. .. 24
——— Stables 347
Blackburne *v.* Gregson 100
Blackden *v.* Bradbear 82, 92, 93, 94
Blackett *v.* Langlands, ii. .. 112
Blake *v.* Attersol, ii. 288
Blakey *v.* Porter 110
Blanchard *v.* Bridges .. 48, 72
Blandy *v.* Herbert, ii. 296
Blatch *v.* Wilder 329
Blaxton *v.* Stone 313
Blewett *v.* Thomas, ii. 108
Blissett *v.* Cranwell 358, 359, 361
Blockville *v.* Ascot 221
Blore *v.* Sutton 87
Blount *v.* Blount 102
Blunt *v.* Clitherow, ii. 54
Boardman *v.* Mostyn 84
Boehm *v.* Wood 105, 238
Bodmin *v.* Vandebendy, ii. 111, 113
Bolger *v.* Mackell 358
Bolton *v.* Carlisle (Bishop of) 72, 264; ii. 126
——— (Duke of) *v.* Williams, ii. 233
Bond *v.* Hopkins 84
——— Kent 100
——— Seawell 427
Bonner *v.* Thwaites 157
Bonney *v.* Ridgard, ii. 85
Boon *v.* Cornforth 467
Booth *v.* Booth 372
Boothby *v.* Walker 17
Boteler *v.* Allington 151
Botting *v.* Martin 73
Boughton *v.* Boughton .. 380, 384
——— Jewell, 6, 32; ii. 124, 232
Boughton *v.* Sandelands 492
——— Sewell, ii. 229
Bovey *v.* Smith, 216; ii. .. 116
Bowen *v.* Ashley, ii. 302
——— Edwards, ii. 319
Bowers *v.* Cator 83
Bowes *v.* Waterworks Company 492
Bowin *v.* Rawlins, ii. 59
Bowles *v.* Bertie 478
——— Rogers, 106; ii. .. 236
——— Stewart .. 40, 250, 535
Bowles's (Lewis) case, 408, 476, 478
Bowman *v.* Milbank 311
Bowyer *v.* Backwell .. 63, 64
Boyce *v.* Green 79
Boyer *v.* Blackwell, ii. 239

PAGE
Boyle *v.* Peterborough (Bishop of) 390
Boyman *v.* Gutch, ii. 255
Boynham *v.* Guy's Hospital .. 535
Boynton *v.* Boynton 384
Bracebridge *v.* Cook 538
Braddick *v.* Mattock, ii. .. 54
Bradford *v.* Belfield 332
Bradley *v.* Bradley, ii. 29, 54, 55
——— Holdsworth 79
Bradshaw *v.* Bennett, ii. .. 14
Braithwaite *v.* Britain, ii. .. 88
Bramley *v.* Alt 59
Brandling *v.* Ord, 216; ii. .. 120
Brandon *v.* Old 159
——— Robinson 188
Brassey *v.* Dawson, ii. 78
Bratt *v.* Ellis 54
Braybrooke (Lord) *v.* Inskip, ii. 107
Brealey *v.* Collins 28
Bree *v.* Holbeach, ii. 136
Brent *v.* Best, ii. 53
——— Brend, ii. 20
Brent's case 280
Brett *v.* Cumberland .. 520, 521
——— Rigden 328, 445
Brice *v.* Smith .. 295, 314, 318
Bridges *v.* Chandos (Duchess of) 398
——— Hitchcock 532
——— Phillips 64
Bridgwater (Countess of *v.* Bolton (Duke of) 306
Briers *v.* Bolton 488
Briscoe *v.* Perkins, ii. 265
Bristow *v.* Waddington, 75, 76, 77
Britain *v.* Van 524
Britton *v.* Cole 504
——— Twining 294, 546
Brockenham *v.* Brockenham, ii. 106
Broderick *v.* Broderick 427
Brodie *v.* Barry 385
——— St. Paul .. 51, 83, 94
Brook *v.* ——— ii. 268
——— Bulkeley .. 40, 525, 533
Brooke *v.* Kent 437
Brookfield *v.* Bradley 65
Brookman *v.* Hales 535
Brooks *v.* Brooks, ii. 31
——— Day, 272; ii. .. 136
Broom *v.* Broom 214
Broome *v.* Monck .. 348, 396
Brotherton *v.* Hatt, 40; ii. 118, 119
Broughton *v.* Bandall, ii. .. 198

PAGE

Broughton *v.* Langley 285
Brouker *v.* Bagot 546
Brounker *v.* Bagot 294
Brown *v.* Brown 519
——— Dyer, ii. 3, 11
——— Fenton 20, *55*
——— Gibbs, ii. 110
——— Parry 381
——— Quilter 520
——— Raindle, 156, 169; ii. 4
——— Ruban *527*
——— Taylor 249
——— Thompson 404
Browne, *Re* Fanny Maria .. 175
——— *v.* Sackville 420
——— Tighe *535*
Browning *v.* Budd 440
——— Wright, 519; ii. 204
Brown's case, ii. 3, 4, 23
Bruce *v.* Bainbridge 300
Brudenell *v.* Elwes 347
Brudnell's case 464
Brummel *v.* Macpherson .. 527
Bryant *v.* Busk, ii. ..126, 269
Brydges *v.* Chandos (Duchess of) 400
Bubb's case, ii. 170
Buck *v.* Andrews 226
Buckhouse *v.* Crosby 92
Buckland *v.* Hall 521
Buckle *v.* Mitchell 153, 217, 223, 227, 297; ii. 261
Buckmaster *v.* Harrop 86
Buckridge *v.* Ingram *536*
Bucks *v.* Antrim 492
Budge, *Ex parte* .. .. ..
Buggins *v.* Yates 388
Bull *v.* Dunsterville, ii. 224
——— Price 57
Bullen *v.* Grant, ii. 23
Buller *v.* Lightfoot, ii. 23
Bulleyn and Grant's case, ii... 3
Bullock *v.* Bullock, ii. *54*
———- Diblay, 192; ii. .. 10
———- Sadleir, ii. .. 97, 113
Bulteal, *Ex parte*, ii. 106
Bunny *v.* Rout 310
Bunter *v.* Cooke 394, 396
Bunting *v.* Leapingwell, ii. .. 32
Burdet's case, ii. 16
Burdon *v.* Burdon 235
———- Kennedy, ii. 134
Burgain *v.* Spurling, ii. 18
Burgess *v.* Lambe 477

PAGE

Burgess *v.* Wheat .. 209, 215, 219
Burgesse and Foster's case, ii. 16, 19, 21
Burgh *v.* Wolf, ii. 107
Burgis *v.* Burgis 546
Burgoyne *v.* Showler 425
Burkett *v.* Burkett, ii. 48
———- Chapman 307
Burley *v.* Pearson 371
Burley's case 336
Burnaby *v.* Griffin 150
Burnett *v.* Lynch 519, 521
Burnsall *v.* Dewy 352
Burrough *v.* Skinner, *52*; ii .. 257
Burrowes *v.* Lock, 20, 250; ii. 107, 133, 243, 270
Burt *v.* Burt 444
Burtenshaw *v.* Gilbert .. 432, 436
Burting *v.* Stonard, *557*; ii. 85
Burton *v.* Barklay 523
——— Lloyd, ii. .. 18, 54
Bury *v.* Browne 516
Bush *v.* Allen 292
Bushby *v.* Dixon, ii. 128
Bustard *v.* Coulter 296
Butcher *v.* Butcher 85, 86, 391
———- Hinton 238
———- Stapeley 83
Butler *v.* Baker, ii. 21
——— Elton 296
——— Stratton 359
——— Swinnerton 412
Butricke *v.* Broadhurst .. 383, 384
Butterfield *v.* Butterfield . 294, 545
Buxton, *Ex parte* 197
——— *v.* Cooper, 19; ii. .. 243
——— Lister, ii. 270
Byas *v.* Byas, ii. .. *53*, *54*, *55*, 57
Byfield's case 353

C.

Cadman *v.* Horner, 88; ii. 241, 264
Calliard *v.* Troward 324
Calomel *v.* Briggs 238
Calthorpe *v.* Hayton, 414; ii. 204
Calvin's case 503
Camden *v.* Morton 520
Camfield *v.* Gilbert, 312; ii. 231, 254, 256
Campbell *v.* Campbell, 359; ii. 245
——— Fleming .. ii. 245
——— French 438
——— Leach .. 491, 492, 495

PAGE

Campbell *v.* Walker .. 233, 234
Cann *v.* Cann, ii. 245
Cannel *v.* Buckle, ii. 261
Canning *v.* Canning .. 311, 324
Cannon *v.* Pack, ii. 6, 81
Capes *v.* Hutton 163
Capp *v.* Topham 58
Capper *v.* Spottiswoode 99
Car *v.* Ellison, ii. .. 14, 50, 54, 57
——— Erroll (Earl of) .. 286, 287
——— Singer, ii. 41, 42
Carey *v.* Askew, ii. 49
Carleton *v.* Griffin 423
——— Leighton, ii. .. 107
Carmarthen (Marquis of) *v.* Hawson, ii. 6
Carpenter *v.* Smith 286
Carrington *v.* Roots 72
Carruthers *v.* Carruthers, ii. .. 74
Carte *v.* Carte 443
Carter, *Ex parte*, ii. 142
——— *v.* Bentatt 351
——— Carter, ii. 54
——— Horner 306
Cartwright *v.* Cartwright .. 160
Carvel *v.* Carvel 329
Carwardine *v.* Carwardine .. 366
Cary *v.* Pulfore 319
Casamajor *v.* Strode, 21; ii. 147, 240
Casberd *v.* Ward, ii. 80
Cason *v.* Round, ii. 113
Cass *v.* Rudele 479
——— Waterhouse 94
Casson *v.* Dade 427
Cater *v.* Pembroke (Earl of) 99
Cator *v.* Charlton, ii. 142
Catlin *v.* Milner 167
Cavard (Lady) *v.* Pulteney .. 385
Cave *v.* Holford 398
Cavendish *v.* Wortley 150
Challenger *v.* Sheppard .. 325, 326
Challis *v.* Casburn, ii. 54
Chalmer *v.* Davis 538
——— Marshall, ii. 41
Chalmers *v.* Storil 381
Cham *v.* Dover, ii. 11
Chambers *v.* Griffith 25
Champion *v.* Plummer 90
Chancellor *v.* Poole 524
Chandelor *v.* Lopus 27
Chandless *v.* Price 294, 546
Chandos (Duke of) *v.* Talbot .. 36
Chaplin *v.* Chaplin 348

PAGE

Chaplin *v.* Leroux 457
——— Rogers 79
Chapman *v.* Brown 349
——— Dalton .. 304, 313, 535
——— Gibson, ii. 53, 54, 55
——— Tanner 98
Charles *v.* Andrews, 99; ii. 74, 243
Charlton *v.* Taylor 307
Chater *v.* Becket 519
Chatham (Earl of) *v.* Daw Tothill 294, 545
——— *v.* Gingeon 64
Chauncy *v.* Grandon 372
Chedington's (Rector of) case 289
Cheesman *v.* Turner 442
Cheetham *v.* Hampson 518
Cherington *v.* Abney 48
Chester *v.* Painter 307
Chesterfield *v.* Bolton 519
——— Jansen, 153; ii. 244
Chesterton *v.* Chesterton .. 307
Cheyney's (Lord) case 304
Chichester *v.* Oxenden 317
Child *v.* Dambridge .. 264, 337
——— Godolphin 81
Chilliner *v.* Chilliner 105
Chillingworth *v.* Chillingworth 63
Cholmley's case 456
Cholmondeley (Marquis of) *v.* Clinton (Lord) .. 219; ii. 141
Christie *v.* Attorney General .. 58
Christopher *v.* Christopher .. 404
Christ's Hospital *v.* Pugh .. 105
Chudleigh's case 280
Church *v.* Brown 527
——— Munday, ii. 24, 51, 53, 57
Churchill *v.* Dibben 166
——— Grove, ii. 109
Civil *v.* Rich 390
Clampe's case, ii. 34
Clanrichard *v.* Burk, ii. 112
Clapham *v.* Bowyer 210
Clare *v.* Bedford (Earl of), ii. 108
Clark *v.* Davy or Day 337
——— Grant 82, 88
——— Thorp 476
——— Turner 151
——— Warde 162
Clarke *v.* Danvers, ii. 36
——— Hume 529
——— King, ii. 257
——— Parker 273
——— Sampson 412
——— Turner 151, 390

PAGE

Clavering *v.* Clavering 477
Clay *v.* Sharpe, ii. 170
——— Sharpe and others .. 309
Clayton *v.* Ashdown 163
——— Blakey 69
———'s case 492
Clements *v.* Scudamore, ii. 8, 12, 13
Clere's (Sir Edward) case .. 287
Clerk (by Committee) v. Clerk 157
—— *v.* Smith 457
——— Wright 85, 94
Cleffe *v.* Gibbons 307
Clifford's estate, *Re* 214
Clifton *v.* Gibbon 415
Clinan *v.* Cooke, 51, 84, 85, 86, 88, 94, 95
Cloberry *v.* Symonds 210
Clowes *v.* Higginson, ii. 261, 264
Cobb *v.* Carpenter 502
Cochrane *v.* Cochrane 65
Cockson *v.* Cock 523
Coffin *v.* Coffin 477
Coke *v.* Brummell, ii. 302
Colchester (Mayor of) *v.* Lowton 202
Colchin *v.* Colchin 11, 23
Cole *v.* Gibbons, ii. 244
——— Livingstone 357
——— Parker, ii. 302
——— Rawlinson 310
——— Robins 158, 159
——— Stott 395
——— Swey 515
——— Tregothic 51
——— White 84
Coleby *v.* Smith 162
Colegrave *v.* Dias Santos 36, 37
Coleman *v.* Gibson 79
——— Sherwin 578
Coles *v.* Tregothic, 93, 233; ii. 243, 245
Collet *v.* De Golls, ii. .. 109, 117
——— Hooper 532, 536
——— Munden, ii. 142
——— Thompson, ii. 254
Collinge *v.* ———, ii. .. 270
Collins *v.* Plummer .. 170, 368
——— Wakeman 389
——— case 323
Colson *v.* Colson 336
Colston *v.* Gardner, ii. 6
Comber *v.* Hill 356
Comberbatch *v.* Perry 353
Combe's case, ii. .. 16, 17, 28

PAGE

Comeby *v.* Gibbons 423
Commons *v.* Marshall ..490, 491
Compton *v.* Collinson, ii. .. 55
———Compton .. 324, 465
———Richards 48
Congleton (Mayor of) *v.* Pattison 523
Conolly *v.* Parsons 61
Constable's case 51
Constantine *v.* Constantine .. 297
Conway *v.* Shrimpton 243
Cood *v.* Cood 101
——— Pollard 101
Cook *v.* Bullock 403
——— De Vandes 359
——— Gerrard 467
——— Martin, ii. 114
——— Oakley 404
——— Parsons 421, 423
Cooke *v.* Booth 533
——— Clayworth, 88, 158; ii. 264
——— Cooke 317
——— Munstone, ii. 257
——— Tombs 95
Coombes *v.* Gibson, ii. 54
Cooper *v.* Cooper, ii. 55
——— Deane .. .. ii. 338
——— Emery .. 9, 217, 243
——— Smith 51
——— Wyatt 376
Coote *v.* Mammon, ii. 119
Cooth *v.* Jackson, 82, 83, 85, 168
Coppin *v.* Coppin, 98, 99; ii. 180
——— Fernyhough 484
Corbet's case 171, 369
——— *v.* Baker 210
——— Brown 20
Corbyn *v.* French 445
Corder *v.* Morgan, 209; ii. .. 170
Cordwell *v.* Mackrill, ii. 115, 116
Cornbury *v.* Middleton 219
Cornish *v.* Rowley, ii. 257
Corval *v.* Sykes 210
Cory *v.* Cory 158
Costigan *v.* Hastler, 167; ii. 264
Cotter *v.* Layer 402
Cottington *v.* Fletcher 387
Cotton *v.* Cotton 442
——— Lee 92
——— Swan 93
Cottrel *v.* Watkins, ii. 129
Countess of Devon *v.* Collyer .. 520
Courthope *v.* Heyman 219
Coutts *v.* Gorham 47

PAGE
Cox *v.* Chamberlain, ii. .. 199, 270
——— Godsalve 78
——— Mathews 47
Coxe *v.* Davy 495
Crabb *v.* Crabb 225
Crabtree *v.* Bramble 348
Cragg *v.* Holme, 88, 158; ii. 264
Crane *v.* Drake, ii. 85
Crawford *v.* Trotter .. 294, 546
Crawley *v.* Gutteridge, ii. .. 323
———'s case 284
Creagh *v.* Wilson 372
Crew *v.* Dicken, ii. 265
Crickett *v.* Dolby, ii. 55
Cripps *v.* Reade, ii. 136
——— Wolcott 361
Crisdee *v.* Boulton 105
Croft *v.* Lister, ii. 54
Crofton *v.* Ormsby 40
Croke *v.* De Vandes .. 294, 546
Crompton *v.* Richards 47
Cromwell's case, ii. 166
Crooke *v.* Brooking 387
Crop *v.* Norton, ii. 269
Crosby *v.* Percy, 418; ii. 130, 249
——— Wadsworth, 70, 75, 76 77, 81
Crosse *v.* Young, ii. 203
Crossing *v.* Scudamore 289
Crouther *v.* Oldfield, ii. 59
Crow *v.* Baldwere, ii. 39
Crowder *v.* Austen, 59, 61; ii. 243
Crowe *v.* Ballard, 233; ii. .. 245
——— Odell 298
Croyston *v.* Baines 81, 86
Cruso and Bugby *v.* Blencowe . 527
——— *v.* Bugby 188
——— Crisp 58
Culpepper *v.* Aston, 218; ii. 84
Cumberland *v.* Kelly, ii. 233, 289
Curling *v.* Shuttleworth .. 54
Currie *v.* Nind, 153, 217, 223; ii. 96
Curtis *v.* Barclay 57
——— Curtis, ii. 198
——— Price .. 337, 343, 543
Cuthbert *v.* Baker 219
——— Lempriere, ii. .. 52

D.

Dacres' (Lord) case, ii. .. 16
Dalby *v.* Pullen 21
Dale *v.* Davenport 66
———'s case 27
Dalton *v.* Hammond 35
Daniel *v.* Adams 167, 168
——— Upley 165, 221
Daniels *v.* Davison, 19, 81; ii. 114, 127
Dansey *v.* Griffith .. 314, 315, 547
D'Arcy *v.* Blake, 348, ii. .. 111
Dare *v.* Tucker, 6; ii. 124, 229, 230
Dark *v.* Zouch 401
Darley *v.* Darley 437
——— Langworthy 437
Darlington *v.* Pulteney 221
Dashwood *v.* Bulkeley 372
——— Peyton .. 304, 467
Davenish *v.* Baines, ii. 49
Davenport *v.* Oldis 356
Davidson *v.* Foley 389
Davie *v.* Beardsham, ii. .. 50
——— Sacheverell 411
——— Stephens 352
Daubeny *v.* Cockburn 372
Davies *v.* Moreton 189
——— Speed 468
Davis *v.* Davis 523
——— Edwards 382
——— Jones 168
——— Lowndes, 11; ii. .. 128
——— Kemp 535
——— Symonds, 68, 87; ii. 255
——— Thomas, ii. 321
Davy *v.* Barber 101
Dawes *v.* King 20
Dawson *v.* Clarke 389
Day *v.* Hungat 162
——— Merry 477
——— Thwaites 425
Deacon *v.* Marsh 324
Dean *v.* Kemys 561
Dearden *v.* Binns, ii. 316
——— Rastron, 28; ii. .. 243
Deering *v.* Farrington .. 517, 518
Deg *v.* Deg 388
De Graves *v.* Smith 20
Delamere's case 281
Denew *v.* Deverall 55, 58
Denn *v.* Cartwright, 192; ii. 72
——— Cutler, ii. 52
——— Diamond, ii. 296
——— Gaskin, 311, 359, 465, 466
——— Gillot 342
——— Judge 332
——— Mellor .. 294, 311, 324
——— Puckey 335, 351
——— Shenton 336

PAGE

Denn *v.* Slater 313, 314
——— Spray, ii. 12, 13
Denton *v.* Stewart 68, 83
Derby (Earl of) *v.* Taylor, 297; ii. 213
——— Wainwright, ii. 15
Derwentwater's (Lord) case .. 288
Deverall *v.* Bolton (Lord), 45, 486
Dick *v.* Donald 31
Dickens *v.* Marshall 324
Dickinson *v.* Lockyer, ii. .. 85
Dicks *v.* Lambert 389
Dickson *v.* Cass, ii. 316
Digby *v.* Legard 389
Digge's case, 221; ii. 75
Dighton *v.* Tomlinson 221
Dilnot *v.* Dilnot 398
Dixon *v.* Robinson, ii. 316
Dobell *v.* Hutchinson, 20, 51; ii. 241
——— Stephens 20
Dod *v.* Dickenson 294
Dodington's case, ii. 70
Dodsley *v.* Kinnersley, ii. .. 260
Dodson *v.* Abey 361
——— Green 351
Doe *v.* Abey 361
——— Allen ..294, 311, 324, 466
——— Baines 311
——— Bannister 353
——— Barford 404
——— Bartle, ii. 4, 57
——— Bell 59
——— Benjamin 508
——— Bettison 495
——— Bevan 528
——— Biggs 298
——— Blackburn 453, 454
——— Blockett 324
——— Bottrell 152, 223; ii. 96
——— Boulcott 111
——— Bowling 304, 467
——— Brawn 223
——— Brightwen, ii. 5
——— Brooks 562
——— Burnsall 352
——— Calloway, ii. .. 18, 21
——— Calvert 492
——— Cartwright, ii. 127
——— Cavan (Lady) .. 221, 492
——— Charlton 353
——— Clare.. .. ..192, 570
——— Clarke 312, 324

PAGE

Doe *v.* Collier 285
——— Collis 352
——— Cowling, ii, ... 54
——— Cundall 319
——— Danvers, ii. .. 49, 51
——— Davies.. 353
——— Day, ii. 155
——— Deakin 480
——— Dickenson 545
——— Elvey 352
——— Evans 309
——— Fawcett 310
——— Fidler 538
——— Fonnerlan 344
——— Foster, ii. 30
——— Freeman 369
——— Frost, 315, 316; ii. 144
——— Fyldes 314, 315
——— Gilbert 307, 312
——— Gillard 312
——— Goldsmith 340
——— Gray, ii. 223
——— Greathead, ii. .. 31, 188
——— Groves 508
——— Halcombe 488
——— Hale 393
——— Hall, ii. .. 21, 22, 32
——— Halley 303, 354
——— Hardwicke 488, 533
——— Harvey 341
——— Heneage 287
——— Heyhoe .. .. ii. 48
——— Hilder 560
——— Hoare 110
——— Hobson, ii... 291
——— Holmes 333
——— Hopkins .. 152, 217, 224
——— Huntingdon, ii. .. 59
——— Hutton, ii. 24
——— Ironmonger 343
——— James, ii. 97
——— Jeffery, ii. 144
——— Jenny, ii. 24
——— Jesson 480
——— Jones, ii. 127, 199
——— Kennard 531
——— Lainchbury .. 310, 312
——— Laming 527
——— Lancashire 414
——— Langlands 310
——— Lewis, ii. 290
——— Ludlam ii. 4
——— Lufkin 192
——— Manifold 427

PAGE
Doe v. Manning .. 152, 217, 224
——— Maple 247
——— Martin, 40; ii. 33
——— Mason, ii. 12
——— Massey 366
——— Morris 192
——— Mulgrave 353
——— Page 353
——— Passingham 292
——— Peach 418, 419
——— Pearson 368
——— Pettet, ii. 127
——— Pierce 419
——— Plowman 560, 561
——— Powell 528
——— Radcliffe 494
——— Ramsbottom 324
——— Reis 508
——— Richards 294, 311, 323
——— Robinson 47
——— Roe, ii. 323
——— Rohn 310
——— Rosser 307
——— Rout 310
——— Routlege, 223, 284; ii. 97
——— Rowe, ii. 97
——— Sandham 498
——— Saunders, ii. 178
——— Scott 370
——— Sherlock, ii. 178
——— Smith, 188, 340, 496, 526, 529
——— Sotheron 359
——— Sparkes 312
——— Staple 405, 559
——— Stenlake 313
——— Sybourn 559
——— Thomas 265
——— Timins 457
——— Tofield, ii. 21
——— Tomkins, ii. 51
——— Truby, ii. 41
——— Tucker 294, 311
——— Undertown 307
——— Vaughan 353
——— Vernon, ii. 22
——— Walton, ii. 144
——— Watts 490, 498
——— Webb 356
——— Webber, 315, 316; ii. 144
——— Weston, ii. 295
——— Wetton 315, 316
——— White 312
——— Whittingham, ii. .. 295

PAGE
Doe v. Willes 407
——— Wilson 495, 496
——— Woodhall 340
——— Woodhouse 307
Doe dem. Burdett v. Wrighte 559
——— Child v. Wright 307, 466
——— Courtail v. Thomas 73
——— Crow v. Baldwere .. 288
——— Hall v. Wood .. 69, 317
——— Holland v. Worsley. 197, 527
——— Mitchinson v. Carter, 188, 528
——— Shewen v. Wroot, ii. 53
Dommet v. Bedford 375
Domville v. Barrington 65
Donellan v. Reade 73
Doran v. Wiltshire, ii. 84
Dormer v. Thurland, 221, 420, 425, 426
Douglas v. Congreve 336
——— Whiting, ii. 127
Dover, *Ex parte* 114
Dowling v. Mill, 533; ii. .. 302
Down v. Hopkins, ii. .. 10, 37
Downcliffe v. Minors, ii. .. 10
Downes v. Back 48
——— Glazebrooke .. 233, 236
Drake v. Munday 508, 516
——— Robinson, ii. 54
Draper v. Borlace, ii. 107
Drapers' Company v. Yardley, ii. 86
Drewe v. Hanson, ii. 239
Drinkwater v. Goodwin 57
Driver v. Bowling 304
——— and Edgar v. Edgar, 182; ii. 71
——— v. Thompson, ii. 34
Drury v. Mann, 35; ii. 5, 25, 29, 80, 81, 233
Dubber v. Trollop 336
Duck v. Braddell, ii. 294
Dudfield and Andrews, ii. .. 16
Dudley and Ward v. Dudley, ii. 111
——— Foliot, 411; ii. 203
——— (Lord) v. Robins .. 110
——— (Lord) v. Ward 78
——— v. Wilson, ii. 139
Duke v. Barnett 486
Dumper's case 189, 527
Dunbar v. Tredennick, 40, 215; ii. 245

PAGE
Duncan *v.* Cafe 53
Dunch *v.* Kent, ii.. 84
Duncombe *v.* Duncombe 408, 539
Dunkley *v.* Scribnor, ii... .. 6
Dunman, *Ex parte* 197
Dunn *v.* Green, ii. 40, 43
Dunnage *v.* White 389
Dunnal *v.* Giles .. .. ii. 34
Dunne *v.* Ferguson.. .. 76, 78
Dutton *v.* Engram 314, 315
Dy, *Ex parte* 548
Dyer *v.* Awsiter 221
——— Cursitor 221
——— Dyer, 224, 225, 304, 386, 457; ii. 34
——— Hargrave 101
Dyke *v.* Silvester, 391; ii. .. 265
Dykes *v.* Blake, 15, 20, 25; ii. 240, 241

E.

Eadesworth *v.* Griffith, ii. .. 321
Earles *v.* Lambert 296
East *v.* Harding 191, 192
—— Grinstead case, ii. 98
—— India Company *v.* Atkyns, ii. 318
——————— Clavill.. 227
——————— Vincent, ii. 107
Easterby *v.* Sampson .. 523, 525
Eastman *v.* Baker 315, 316
Eaton *v.* Lyon.. 533
——— Sanxter 109
Ebrand *v.* Dancer 225
Edge *v.* Stafford 73
Edward *v.* Leay 31
Edwards *v.* Appletree, ii. .. 207
——————— Champion, ii... .. 57
——————— Fidell, ii. .. 9, 36
——————— Hammond, ii. .. 34
——————— Hodding, ii. 258
——————— Lewis 388
——————— Morgan 521
——————— Slater, ii. .. 75, 76
Edwin *v.* Thomas, ii. 9
Egerton *v.* Egerton, ii. 113
———————Matthews .. 79, 92
Egglestone *v.* Speke 430
Eicke *v.* Meyer 5, 7
Eilbeck *v.* Wood 401
Ekins *v.* Thresham.. 20
Elliott *v.* Davenport 445
——————— Edwards, ii. .. 89, 250

PAGE
Elliott *v.* Elliott 225, 226
——————— Merryman, 17, 274; ii. 72, 84
Ellis *v.* Ellis 372
——— Smith 425
Elmon *v.* Kingscote 94
Elmore *v.* Stone 79
Elton *v.* Eason.. .. .. 294, 546
——— Elton 374
Elwes *v.* Shaw.. 78
Ely (Dean and Chapter of) *v.* Warren, ii. 9
Emblyn *v.* Freeman 388
Emerson *v.* Boville 405, 406
——————— Heelis, 51, 75, 76, 78, 92, ii. 240
——————— Inchbird 457
Emery *v.* Wase 167, 168
Empson *v.* Soden 496
Ensign *v.* Kellog, ii. 263
Erish *v.* Rives, ii. 3
Essex's (Earl of), case 427
Ettricke *v.* Ettricke 359
Eure *v.* Howard 285
Evans *v.* Bicknell, 561, ii. 110, 132
——— Roberts, .. 75, 77, 78
——— Thomas 508
Evelyn *v.* Chichester .. 163, 506
——————— Templar, 152, 217, 224; ii... 96
Everal *v.* Smalley, ii. 40, 41, 42
Eves *v.* Ashton, ii. 5
Evroy *v.* Nichols, ii. 108
Ewer *v.* Astwicke, ii. 5
——— Corbet, 222, 557, ii. .. 84
——— Woodfine 504
Ewing *v.* Osbaldiston .. 9, 100
Eyre *v.* Dolphin, ii. 115
——— Dunsford 20

F.

Fagg *v.* Dobie 524
Fagge *v.* Haseman 303
Fairfax *v.* Heron 324
Falkner *v.* Falkner 467
Fain *v.* Ayres, ii. 206
Fane *v.* Barr, ii. 13
——— Spencer 486
Farebrother *v.* Prattent 53
——————— Simmons.. .. 93
Farlow *v.* Wielden 65
Farmer *v.* Robinson .. 51, 92
——————— Rogers 541

PAGE
Farr *v.* Newman 554
Farrer *v.* Nightingale, 13, 21; ii. 139
Fawcett *v.* Lowther, ii. .. 11, 18
Fawell *v.* Heelis 98
Featherstonhaugh *v.* Fenwick, 388, 532, 536
Fenny *v.* Agar.. .. .. 314, 315
——— Durant, ii. 80
Fentiman *v.* Smith 72
Fenton *v.* Brown 38, 55
——— Holloway .. 158, 159
Fenwick *v.* Milford 468
Feoffees of Heriot's Hospital *v.* Gibson 95
Fergus (Executors of, *v.* Gore 63
Ferguson *v.* ——— 518
——— Tadman 479
Ferrars *v.* Cherry, 216, ii. .. 120
Ferrers *v.* Cherry 216
——— Fermor, ii. 166
Ferret *v.* Frampton.. 359
Feversham (Earl of) *v.* Watson 238
Field *v.* Yea, ii. 192, 193
Fielder *v.* Higginson, ii. .. 267
——— Hooker .. 44, 247, 485
Fielding *v.* Winwood, ii. .. 53
Fildes *v.* Hookes, ii. 147
Finch *v.* Finch.. 225
——— Northworthy, ii. .. 109
——— Winchelsea (Earl of) 215
Fisher *v.* Ameers 520, 521
——— Nicholls, 313; ii. .. 31
——— Rogers.. 35
——— Wigg, 359; ii. ..25, 31, 35
Fitch *v.* Hockley, ii. 15
——'s case, ii. 23
Fitzer *v.* Fitzer 223
Fitzgerald *v.* Burke, ii. 113
——— Falconbridge, ii. 119
Fitzgibbon *v.* Scarlan 535
Fitzroy *v.* Howard 478
Flather *v.* Stubbs, ii. 304
Fletcher *v.* Ashburner 348
——— Smiton.. 307, 308, 309
——— Tollet 150
Flight *v.* Bolland 163
——— Booth, 13, 20; ii. .. 241
——— Glossop 523
Flodd *v.* Finlay, 88, 89; ii. .. 264
Flower *v.* Hartop 30
Floyd *v.* Aldridge, ii. 53
——— Bethell, 16; ii. .. 243
——— Buckland.. 84
——— Mansell 210

PAGE
Floyd *v.* Wallis, ii. 55
Floyer *v.* Hedingham, ii. .. 28
——— Lavington, ii. 318
Fludyer *v.* Cocker 101
Flureau *v.* Thornhill, ii. 131, 231, 255, 256
Foley *v.* Burnall 375
——— Hill, ii. 114
——— Perceval, ii. 170
Foljambe's (Lady) case, ii. .. 23
Foot *v.* Salway.. .. .. 68, 87
Ford *v.* Hoskins, ii. 21
Forder *v.* Wade, ii. 4, 5
Foreman *v.* Leyes, ii. 316
Forrest *v.* Elwes 49
Forsall *v.* Jones, ii. 136
Forse *v.* Hembling 405
——— Faulkener, ii. 107
Forshall *v.* Coles 272
Forth *v.* Chapman 322, 541
——— Norfolk (Duke of), ii. 135
Foster *v.* Charles 20
——— Cook 381
——— Deacon 479
——— Hale 84
——— Mapes, 411; ii. .. 203
——— Pierson 411
——— Romney 353
Foulker *v.* Gorwyn, ii. 88
Fountain *v.* Gooch, ii. 71
Fowle *v.* Freeman, 52, 92, 95, 96
——— Welsh, ii. 203
Fowler *v.* Blackwell .. 303, 313
——— Richards 552
Fox's case 514
Fox *v.* Hind 369
——— Macreth, 233; ii. .. 108
——— Swan 190
Foxcraft *v.* Lister 83, 84
Foy *v.* Hinde 170
Frame *v.* Dawson 84
Francis *v.* Wiggell 230
Frank *v.* Lear 323
——— Standish, ii. 51
——— Stovin 335, 351
Franklin *v.* Thornbury 230
Frazer *v.* Moore 210
——— Skey.. 518
Freeman *v.* Baker 20
——— Phillips, ii. ..15, 38
——— West 512
Freestone *v.* Rant, ii. 56
French *v.* Cadell 548
———'s case, ii. 10

PAGE
Frewin *v.* Relfe 361
Freyes *v.* Robinson .. 294, 545
Frith *v.* Rotherham, ii. .. 316
Frogmorton *v.* Holliday, 314, 323
———— Wharrey .. 341
Frome *v.* Wright 198
Frontin *v.* Small 519
Frühling *v.* Schroeder, ii. 231, 255
Fry *v.* Porter, ii. 318
Fry's case 373
Fuller *v.* Abrahams 60
————Fuller 442
Fursaker *v.* Robinson, ii. 55, 56

G.

Gaby *v.* Driver 44, 54
Gale *v.* Gale, ii. 51
——— Noble, ii. 59
——— Wells 51
Garbrand *v.* Allen 230
———— Mayott 331
Garbutts *v.* Hilton 374
Gardiner *v.* Harding .. 307, 308
———— Sheldon .. 354, 467
———— Skelton 467
Gardon, *Ex parte* 92
Garfoot *v.* Garfoot 330
Garland *v.* Jekyl, ii. 25
Garn *v.* Garn, ii. 54
Garnons *v.* Swift, 110; ii. .. 247
Garrard *v.* Gosling 89
Garrett *v.* Sharpe 48
Garrod *v.* Garrod 353
Garston *v.* Edwards 45
Gascoign *v.* Thwing, 224, 386, 387
Gathorne's estate, *Re* 214
Geary *v.* Bearcroft 514
George *v.* Jew, ii. 17
Gervoye's case, ii. 73
Gibbens *v.* Cross 406
Gibbons *v.* Baddall 98, 100; ii. 89
————Caunt 405
————Moulton .. 165, 166
————Pott 400
Gibbs *v.* Merrell 163
————Ongier 389
Gibson *v.* Couthope 529
——— Fletcher, ii. 108
——— Jayes 235
——— Kinvern 391
——— Montfort, 325, 443; ii. 14, 50
——— Spurrier, 25; ii. .. 240
Gibson *v.* Wells 476
Gilbert *v.* Withy 357
Gilby *v.* Copley, ii. 168
Gilham *v.* Lock 543
Ginger *v.* White 353
Glenorchy (Lord) *v.* Bosville, 346
Glover *v.* Monckton .. 315, 316
———— Strothoff 294, 545
Godbold *v.* Freestone 287
Godfrey *v.* Bullock, ii. 12
Godwyn *v.* Kelsha, ii. 49
————Spray, ii 11
Goffe *v.* Haywood 555
Golborn *v.* Allcock, ii. 109
Goldin *v.* Lakeman .. 315, 316
Gooch's case, 152, 217; ii. .. 96
Goode *v.* Harrison 163
Goodman *v.* Grierson, ii. 318, 320
Goodridge *v.* Goodridge, 354, 355
Goodright *v.* Davids .. 190, 531
———— Forrester, 171, 393, 394
———— Glazier 443
———— Harwood 432
———— Pears, ii. 31
———— Pullen .. 335, 336
———— Statham, ii. .. 302
———— Stocker 323
Goodsight *v.* Moses 152
Goodson *v.* Ellison 220
Goodtitle *v.* Chandos (Duke of) 174
———— Edmunds 466
———— Funucan 493
———— Herring 340
———— Maddern 324
———— Meredith 443
———— Morgan, ii. 136
———— Morse, ii. 57
———— Otway 327, 398
———— Paul, ii. 31
———— Pegden 547
———— Pope 236
———— Way 509
Goodwin *v.* Spray .. .. ii. 11
Goodwyn *v.* Goodwyn .. 308; ii. 53, 54, 55, 58
———— Winsmore, 169; ii. 4
Gordon (Lord W.) *v.* Hertford (Marquis of) 89
Gore *v.* Gibson 158
Gorge's (Lady) case, 224, 225, 226
Goring, *Ex parte* 196
——— *v.* Bickerstaff 219
——— Nash, ii. 54
——— Warner 528

PAGE
Gosbell *v.* Archer, 75, 96; ii. 253
Gosling *v.* Warburton 381
Goss *v.* Nugent (Lord) 68
Gossage *v.* Taylor 341
Gouge *v.* Hayward 555
Gough *v.* Howarde 555
Gower *v.* Gower 64
Gowland *v.* De Faria, ii. .. 244
Grafton (Duke of) *v.* Horton, ii. 38
Graham *v.* Sime, 35; ii. .. 29
Granger *v.* Worms, 11; ii. .. 242
Grant *v.* Mills 100
——— Munt 21
——— Shallis, ii. 180
Grant's case 172
Grantham *v.* Copley, ii. 22, 32, 41
Gravenor *v.* Brook, ii. 310
——— Hallum 389
——— Rake, ii. 3, 10
——— Ted, ii. .. 10, 25
Graves *v.* Boyle 383
Gray *v.* Gutteridge .. 44, 52
Graydon *v.* Hicks 371
Grayme *v.* Grayme, ii. 43
Grayson *v.* Atkinson .. 91, 421
Green *v.* Armstead 323
——— Green, ii 380
——— Holden 214
——— Jackson, 272; ii. .. 136
——— Stephens 356
——— Wiseman 285
Greenaway *v.* Adams, 68; ii. 260
Greenhill *v.* Greenhill, ii. 50, 53
Greenwood *v.* Tyber, ii. .. 30
Gregory *v.* Mighell 83
Grescott *v.* Green 524
Greton *v.* Hayward 340
Grey *v.* Cuthbertson 526
——— Edwards 514
——— (Lord) *v.* Grey (Lady) 225
——— Northumberland (Duke of) 249
Griffin *v.* Griffin 535
——— Taylor 167
Griffith *v.* Gale 334
Grigby *v.* Cox 165
Grocers' Company *v.* Archbishop of Canterbury 107
Growcock *v.* Smith, ii. 23
Gubbins *v.* Creed 236
Guest *v.* Homfray 26, 239
Gulliver *v.* Ashby .. 182; ii. 71
——— Wickett 370
PAGE
Gully *v.* Exeter (Bishop of) 152, 217, 224
Gunnis *v.* Erhart 11
Gunter *v.* Halsey, ... 83
Gwilliams *v.* Rowell 330
Gwyne *v.* Thomas, ii. 95
Gyppyn *v.* Bunney, ii. 23

H.

Habergham *v.* Vincent, 289, 389, ii. 33, 49
Haddon's case 167
Halcot *v.* Markant 388
Hales *v.* Hales, ii. 108
Hall *v.* Cazenove 512
——— Dench 399
——— Dewes 332
——— Hallett 235
——— Hardy 167, 168
——— Smith, ii. 114, 119
——— Warren, 160, 161; ii. 259
Hallen *v.* Runder 78
Hallet *v.* Middleton, ii. 206
Halsey *v.* Grant, ii. 139
Hamatt *v.* Fielding, ii. 259
Hamilton (Duchess of) *v.* Hamilton (Duke of) 238
——— Royal, ii. 115
Hamington *v.* Rudyard, ii. .. 144
Hamlen *v.* Hamlen 192
Hammond *v.* Hill, ii. 204
——— Toulmin, ii. .. 206
Hamond *v.* Holliday 56
Hampton *v.* Spencer 387
Hanbury *v.* Cockerell .. 315, 316
Hancock *v.* Caffyn 508
Hanger *v.* Eyles, 26; ii. 243
Hanson *v.* Armitage 79
——— Robedean, 55; ii. .. 257
——— Stevenson 529
Hardham *v.* Roberts, ii. .. 53
Harding *v.* Crethorne 92
——— Gardiner 476
Hardingham *v.* Nicholls, ii. .. 113
Hardwick *v.* Mynd, ii. 85
Hardwood *v.* Tooke, ii. 113
Hare *v.* Groves 520
Harford *v.* Purrier, 479; ii. .. 270
Hargrave *v.* Le Breton, 60; ii. 252
Hargreaves *v.* Rothwell, ii. .. 120
Harkness *v.* Bayley 403
Harley *v.* King 524
Harnett *v.* Gielding, ii. 241

PAGE

Harrington *v.* Hoggart 53
——— Wheeler 239
——— Wise 508
Harris, *Re* William 422
——— *v.* Barnes 338
——— Cutler 394
——— Graham 165
——— Ingledew .. .. ii. 54
——— Lincoln (Bishop of), 322
——— Zouch 486
Harrison *v.* Blades, ii. 127
——— Forth, ii. 120
——— Harrison .. 216, 421
——— Rushforth, ii. .. 224
——— Southcote, ii. .. 113
Hart *v.* Middlehurst 223
Harrow School *v.* Alderton .. 476
Hartop's case, 328; ii. 25
Harvey *v.* Aston 372
——— Harvey 78
——— Montagne, ii. .. 117
——— Phillips, ii. 125
——— Young 19
Hassel's Executors 520
Hastings and Grey, ii. 3
——— *v.* Blake 521
——— Wilson 530
Hasting's (Dame) case 221
Hatter *v.* Ash 512
Hatton *v.* Gray 92
——— Long 238
Hawe *v.* Burton 442
Hawes *v.* Wyatt 401
Hawkes *v.* Saunders 554
Hawkins *v.* Holmes .. 84, 90
——— Kemp, 221, 418; ii. 225
——— Leigh, ii. 14, 50, 53, 54, 57
——— Shearman 524
Hay *v.* Coventry (Earl of) .. 466
Haycraft *v.* Creasy 20
Haydon *v.* Bell 487
Hayes *v.* Bickerstaffe, 411, 412, 518; ii. 203
——— Caryl, ii. 237
——— Foorde, ... 336, 337
Haynsworth *v.* Pretty 457
Hayward *v.* Haswell 509
Hayward's case, ii. 514
Hazlewood *v.* Pope, ii. 54
Heap *v.* Egerton, ii. 113
Hearle *v.* Boteler, ii. 89
Hearne *v.* Tomlins, ii. .. 139, 251

PAGE

Heath *v.* Heath 359
Heathe *v.* Heathe 313
Hedger *v.* Row 457
Heggor *v.* Felson, ii. 23
Hellier *v.* Casbard 521
Hellings, *Re* 422
Helps *v.* Hereford 171
Helyer *v.* Helyer 444
Heming *v.* Archer, ii. 94
——— Munckley 372
——— Spiers, ii. 267
Hender *v.* Rose 384
Henderson *v.* Farbridge, ii. .. 49
——— Hay 526, 527
Henfree *v.* Bromley, ii. 303
Hennard *v.* Moore 98, 99
Henning *v.* Ferrers, ii. 108
Heny *v.* Purcell 343
Herbert *v.* Frean 150
Herle *v.* Botelers 98, 100
——— *v.* Greenbank 38
Herne *v.* Meers 233
Herring *v.* Brown, ii. 166
Heriott's Hospital (Feoffees of) *v.* Gibson 48
Hertford *v.* Bone, ii. 237
Hesse *v.* Stevenson 414
Heward's case 514
Hewett, *Re* 85
Hewlins *v.* Shipman .. 71, 72
Heydon's case, ii. 3, 39
Heylyn *v.* Heylyn, 445; ii. .. 52
Heyman *v.* Neale 51
Hibbert *v.* Rolleston, ii. 106
——— Shee, ii. 139
Hick *v.* Dring 312
——— Philips 21
Hicken *v.* Hicken, ii. 54
Hickman *v.* Hazlewood 312
Hicks *v.* Cooke 236
——— Morant 40
——— Pendarves 373
——— Phillips, ii. 243
Higden *v.* Callamy, ii. 109
Higginbottom's case, ii. .. 206
Higgins *v.* Rose 532
Higginson *v.* Clowes 11
Higham *v.* Coles 492
Highway *v.* Banner 337
Hill *v.* Adams, ii. 111
——— Barclay 190, 531
——— Boulton, ii. 59
——— Buckley 21
——— Cock 396

PAGE

Hill *v.* Exeter (Bishop of), 152, 217, 223, 224; ii. 97
——— London (Bishop of) .. 388
——— Vaughan, ii. 257
——— Wiggett, ii. 20
Hillary *v.* Waller 265
Hills *v.* Downton, ii. 53, 54, 55, 56
Hilton *v.* Kenworthy 330
——— King 430
Hinde *v.* Whitehouse 51, 94, 95
Hine *v.* Dodd, ii. 115
——— White 51
Hinton *v.* Hinton, 169; ii. .. 4
——— Smith 150
Hirst *v.* Smith 553
Hitchcock *v.* Giddings, ii. .. 136
——— Sedgwick, ii. .. 109
Hitchens *v.* Bassett 432
Hitchman *v.* Wolton 36
Hixon *v.* Oliver, ii. 106
Hoadley *v.* M'Laine 79
Hobart *v.* Hammond, ii. .. 25
——— Suffolk 388
Hobbs *v.* Norton, ii. 107
Hobson *v.* Trevor 105
Hoby *v.* Roebuck 73
Hodges *v.* Jones 63
——— Lichfield (Earl of), ii. 123, 231, 254, 255, 256
——— Lloyd 387
——— Middleton 308
Hodgeson *v.* Bussey 545
Hodgkinson *v.* Cooper, 9, 217, 243, 247
——— Wood .. 400, 485
Hodgson *v.* Dean, ii. 117
——— Merest, ii, ... 57
Hodle *v.* Healey 210
Hodson *v.* Ambrose .. 335, 336
——— Merest 351
Hogan *v.* Jackson 312
Holcroft (Lady) *v.* Smith, ii. 125
Holder *v.* Preston, ii. 15
——— Taylor 518
Holdfast *v.* Clapham, ii. 21, 22, 32
——— Marten 307
Holdford *v.* Hatch 521, 527
Holland, *Ex parte*, ii. 25
——— *v.* Eyre 96
——— Worsley 188
Holloway *v.* Berkeley, ii. .. 25
——— Clarke 406
——— Millard 227
Holmes *v.* Ailsbie, ii. 178

PAGE

Holmes *v.* Blogg, .. 163, 230, 506
——— Coghill, ii. .. 55, 106
——— Meynell 357
Holt *v.* Holt 388
——— Samback 408
Holtzapfell *v.* Baker 520
Holyland, *Ex parte* 160
Hooper, *Ex parte* 85
———*v.* Goodwin .. 235, 389
——— Ramsbottom .. 193
Hopewell *v.* Ackland, 306, 310, 311
Hopkins *v.* Hopkins .. 286, 349, 370, 388
Horcliff *v.* Warsley.. 150
Horlock *v.* Priestley, ii. .. 18
Horn *v.* Horn, ii. 86
Hornby *v.* Houlditch 521
Horne *v.* Barton 295, 346
Horner *v.* Swann, ii. 76
Hougham *v.* Sandys .. 418, 419
House *v.* Laxton, ii. .. 165, 166
Hoveuden *v.* Annesley (Lord) 210
Howard *v.* Bartlett, ii. 4
——— Castle, 59; ii. .. 243
——— Hurons, ii. 318
——— Hopkins 105
Howe *v.* Dartmouth 396
———Palmer 79
Howell *v.* Barnes .. 219, 325, 331
——— George .. 88, 163, 168; ii. 261, 264
——— Price, ii. 318
——— Richards 414
——— Young 273
Howes *v.* Brushfield 413
Howland *v.* Norris 101
Huband *v.* Huband 398
Huddlestone *v.* Biscoe .. 92, 95
Hudson *v.* Bartram .. 105, 238
——— Hudson 222
——— Merest, ii. 49
Hughes, *Ex parte* 235
———*v.* Collis 329
——— Garner, ii. 113
——— Garth, ii. 112
——— Harris, ii 59
——— Kearney, 100; ii. 180
——— Richman 523
——— Robotham 538
——— Wynne .. 32; ii. 125, 232
Hulme *v.* Heygate 443
Humberston *v.* Humberston .. 348
Humberstone *v.* Jones, ii. .. 323

PAGE
Humble *v.* Bill, 259; ii. .. 85
———— Glover 521
Hungate *v.* Hungate 386
Hungerford *v.* Clay 209, 501
Hunsden *v.* Cheyney, ii. .. 107
Hunt *v.* Bourne 171
——— Danvers, 414; ii. .. 204
——— Silk, ii. 257
Hunter, *Ex parte*, 106; ii. .. 236
——— *v.* Wilson 479
Huntley's case 342
Hurst *v.* Holding 56
———— Winchelsea (Earl of) 456, 458
Hussey *v.* Grills, ii. .. 50, 60
Hussey's case 398
Hutchinson *v.* Bell 20
Hutton *v.* Simpson 304, 467
Huxtep *v.* Brooman 310
Hyde *v.* Hyde 436
——— Skinner 533, 535
——— Windsor (Dean of) .. 522
——— Worsdale 331
Hyley *v.* Hyley 306

I.

Ibbetson *v.* Beckwith .. 307, 309
Ibbotson *v.* Rhodes, ii. 107
Idle *v.* Cooke, 313, 468; ii. .. 31
Iggulden *v.* May 518, 538
Ilchester (Earl of) *Ex parte* .. 430
Inge *v.* Leapingwell 89
Ingery *v.* Hyde 522
Ingram *v.* Pelham, ii. 120
Inhabitants of Chillingworth .. 163
Inkerdai's case 304
Inkersall's case 312
Innan *v.* Stamp 73
Iremonger *v.* Newsam 520
Ireson *v.* Denn, ii. 141
———— Carman, 272; ii .. 136
Ischam *v.* Morrice 282, 514
Isherwood *v.* Olknow .. 488, 526
Istead *v.* Stoneley 525
Ithell *v.* Beane, ii. 54
——— Potter 90

J.

Jackman *v.* Hoddeston, 191; ii. 6
Jackson *v.* Cator, ii. 107
PAGE
Jackson *v.* Hurlock 443
———— Jackson, ii. 106
———— James, ii. 288
———— Lever 479
———— Neale 191
Jackson's case 39
Jacobson *v.* Williams 196
James, *Ex parte* 235
——— *v.* James, ii. 233
———— Morgan, ii. 243
———— Oades, ii. 318
———— Shore, ii. 240
Janisbury *v.* Matthews 79
Jarman *v.* Egglestone, ii. .. 254
Jason *v.* Eyres, ii. 318
Jeans *v.* Wilkins, ii. 134
Jebb *v.* Abbott 219
Jenison *v.* Lexington 517
Jenkins *v.* Armitage 521
———— Hiles, ii. 266
———— Hermitage 521
———— Jenkins 323
———— Reynolds 92
———— Young 290
Jenkinson *v.* Pepys .. 11, 13, 87
Jenner *v.* Tracey 210, 211
Jennings *v.* Bragg, ii. 226
———— Moore, ii. 29, 107, 119
———— Wend, ii. 319
Jenour *v.* Jenour 359
Jentleman's case, ii. 61
Jermain *v.* Eggleston, ii. .. 124
Jermin *v.* Orchard 297, 543
Jermyn *v.* Arscott 369
Jernigan *v.* Baxter 552
Jerrard *v.* Saunders, ii. 110
Jervis *v.* Taylor 198
Jervoise *v.* Clark 61
———— Northumberland (Duke of), ii. 265
Jesson *v.* Wright 341
Jevens *v.* Harridge 503
Jewell *v.* Horwood, ii. 9
Joddrell *v.* Corwell 521
John *v.* Jenkins 509
Johnson *v.* Johnson 334
———— Notts, ii. 207
Johnston *v.* Medlicott 158
Jolland *v.* Stainbridge, ii. .. 138
Jolliffe *v.* East 359
Jones *v.* Atherton, ii. 133
——— Barklay, ii. .. 247, 428
——— Collier 382
——— Croucher 543

PAGE

Jones *v.* Dike 45
——— Edney, 11, 13, 14; ii. 241, 243
——— Flint 79
——— Lake 423
——— Littledale 44
——— Mitchell 389
——— Morgan 385
——— Morley 280
——— Mudd 191
——— Nanney 52, 55
——— Powell 532
——— Price 239
——— Reasbre, ii. 13
——— Say and Sele (Lord) 293, 343
——— Verney ..490, 496, 498
——— Westcomb 370
Jongsman *v.* Jongsman, 307, 308, 309
Jordan *v.* Savage, ii. 74
Jourdain *v.* Wilson.. 526
Jouter *v.* Drake, ii. 250
Joynes *v.* Statham, 88; ii. .. 254
Judd *v.* Pratt, ii. 55
Jurden *v.* Stone, ii. 23

K.

Keech *v.* Hall .. 44, 247, 485, 502
———Sandford 388
Keene *v.* Stukeley, 105, 238; ii. 243
Kellett *v.* Kellett 389
Kelvington *v.* Gardiner, ii. .. 318
Kempe *v.* Carter, ii. 7, 9, 10, 37
Kemys *v.* Procktor.. 51
Kendray *v.* Hodson 44
Kenebal *v.* Scrafton, 405, ii. 53
Kenedy *v.* Daly, ii. 120
Kennedy *v.* Green, ii. 124
——— Lee 83
Kensington *v.* Mansel, ii. .. 24
Kentish *v.* Kentish, ii. 55
Kenworthy *v.* Schofield .. 82, 94
Ker *v.* Cloberry, ii. 239
Kerry, Glazier *Re*, ii. 296
Kersey *v.* Carstairs 529
Kerson *v.* Dorrien 227
Ketsey's case 163, 230
Kettle *v.* Townsend, ii. .. 53, 56
Kibbett *v.* Lee 221
Kidney *v.* Cousmaker, ii. .. 55
Kilcher Thomas (In the goods of) 424
Kine *v.* Balfe 83
King *v.* Bromley, ii. 321

PAGE

King *v.* Burchell 351
——— Dennison 389
——— Jones, ii. 206
——— King, 110; ii. .. 14, 53
——— Melling, 336, 351, 353; ii. 75
——— Rumble 358
Kingdom *v.* Bridges .. 224, 226
——— Nottle 415, 525; ii. 206
Kingsley *v.* Young, ii. 205
Kircudbright (Lady) *v.* Kircudbright (Lord) 444
Kirk *v.* Webb 388
Kirkham *v.* Smith 150
Kirtland *v.* Pounsett, ii. .. 251
Kirton *v.* Elliott .. 163, 505, 506
Kite *v.* Quienton, ii. 21
Knatchbull *v.* Gruebar 24
Knight *v.* Adamson, ii. 56
——— Cook, ii. 14
——— Crockford, 91, 109 ii. 254, 302
——— Footman, ii. 20
Knollys *v.* Alcock 402
Knott, *Ex parte*, ii. 117
Knowles *v.* Powell 504
——— Spence 210

L.

Lacey, *Ex parte* 238
Lacon *v.* Mertins, 83, 85, 86, 99
Lade *v.* Lade 387
Lake *v.* Ashwell, ii. 293
——— Gibson 156
Lamb *v.* Archer 546, 548
——— Parker 400
Lampet's case, 555, ii. 144
Lampleigh *v.* Lampleigh, 225, 226
Lampley *v.* Blower.. 547
Lampon *v.* Cock, ii. 180
Lancaster *v.* Thornton 326
Lane *v.* Dighton 387
——— Hawkins 306
Land *v.* Page 371
——— Pannell, 344, ii. .. 33
Langley *v.* Baldwin ..303, 354
———Oxford 557
Langstaff *v.* Meagoe 36
Langton *v.* Astrey 215, 216
——— Tracey, ii. 97
Lapierre *v.* M'Intosh 503
Large's case 373

PAGE
Larkins *v.* Larkins 436
Lashbrook *v.* Cock 359
Lassels *v.* Catterton, 416, ii... 207
Latless *v.* Holmes 250
Lavender *v.* Stanton, ii. .. 86
Lawrence *v.* Halliday 65
Lawrenson *v.* Butler 163
Lawson *v.* Laude, ii. .. 68, 87
Lawton *v.* Lawton 78
Laythorp *v.* Bryant, 92, 418, ii. 130, 249
Lea *v.* Libb 424
Leach *v.* Dean, ii. 96
——— Millett 20
Leake *v.* Morris 85, 86
Lechmere *v.* Brazier 238
——— Carlisle (Earl of) 215, 348
Lee *v.* Boothby, ii. 10
——— Brown, ii. 3
——— Exelby, ii. 248
——— Lee, ii. 144
——— Munn 54
——— Vernon 533
——— Withers 311
Leeds *v.* Cheetham 520
——— Crompton.. .. 189, 527
Lees *v.* Mosley 350, 352
Lefroy *v.* Lefroy 65
Legard *v.* Hodges 387
Legate *v.* Sewell 150
Leicester's (Earl of) case .. 492
Leland *v.* Griffiths 65
Lemayne *v.* Stanley .. 421, 430
Lench *v.* Lench 388
Lendop *v.* Eborall, ii. ..54, 55, 56
Le Neve *v.* Le Neve, ii... .. 119
Leonard *v.* Sussex 295, 346
Lereux *v.* Nash 524
Lessee Murphy *v.* Connelly, ii. 295
Lester *v.* Garland 378
Levick *v.* Coppin 554
Levy *v.* Lindo .. 105, 160, 238
Lewin *v.* Cox 359
——— Guest, ii. 72
Lewin's (Hugh) case 161
Lewis, *Ex parte* 197
——— *v.* Branthwaite 249
——— Campbell 525
——— Lechmere, 33; ii. 243
Lewis's case 405
Ley *v.* Anderton 553
Lilley *v.* Deschampes 239
Limberry *v.* Mason 548
PAGE
Lincoln's (Lord) case 398
Lindley *v.* Clarkson, ii. 293
Lindopp *v.* Eborall, ii. 54, 56, 57
Line *v.* Stephenson 519
Lingen *v.* Sowray 348
Lisle *v.* Gray 339
Lister *v.* Lister 233, 235
——— Turner 227
Llewellyn *v.* Williams 512
——— Mackworth .. 380
Lloyd, app. Burton, resp. ii... 54
——— *Ex parte* 36
——— *v.* Baldwin, ii. 85
——— Branton 374
——— Buckland.. 84
——— Collett, 105, 238; ii. 237
——— Crispe 188, 189
——— Gregory 505
——— Griffith, ii. 202
——— Lloyd 224
——— Read 225, 226
——— Spillet, 288, 386, 387, 389
——— Tomkies, 411; ii. 203
Learing, *Ex parte* 100
Lock *v.* Wright 238
Lockey *v.* Lockey 83
Lockington's case, ii. 102
Lockton *v.* Lockton.. .. 330, 331
Lockyear *v.* Savage 375
Loddington *v.* Kime 351
Logan *v.* Meinholt, ii. 263
London (City of) *v.* Galway .. 467
——— Garraway, 304, 388
——— Milford .. 533, 535
——— Richmond, ii. 243
Long *v.* Blackall 545
——— Fletcher, 26; ii. .. 238
——— Ricketts 372
Lord *v.* Stephens 33, 479
Loval (Lord) *v.* Ranalagh (Lord), 190
Love *v.* Wyndham 294, 545
Loveacres *v.* Blight 303, 311, 359
Loveday *v.* Claridge 548
Lovell *v.* Lovell, 349; ii. 32, 33
Lovie's (Leonard) case 546
Lowe *v.* Davies 339
——— Harewood, 60; ii. .. 252
——— Manners 371
——— Peers 105
Lowndes *v.* Lane, 88; ii. .. 241

PAGE

Lowther *v.* Andover (Countess of), 101
——— —— Carleton, 216; ii. 120
——— —— Lowther, ii. .. 243
Lugg *v.* Lugg 404
Lumly's (Lord) case 207
Lunsford *v.* Popham, ii. .. 15
Lush *v.* Wilkinson 227
Luther *v.* Kidley 399
Lutwich *v.* Mitton 282, 514
Lutwynch *v.* Winford 218
Lyburn *v.* Warrington, ii. .. 302
Lyddall *v.* Weston 23
Lydford *v.* Coward, ii. 56
Lysney *v.* Selby, 44, 247, 485; ii. 136
Lytton *v.* Faulkland (Lady), 442

M.

Maberley *v.* Robins, 250; ii. 255
M'Adam *v.* Walker 159
M'Alpine *v.* Swift 535
Macaree *v.* Tall 307, 308
Macclesfield *v.* Blake 66
Macdonald *v.* Hanson 197
Macey *v.* Shurner, ii. 14, 50, 54
Machell *v.* Temple 427
——— Weeding .. 303, 351
Mackreth *v.* Symonds, ii. 89, 180
Maclean *v.* Dunn 75, 93
Mac Leod *v.* Drummond .. 557
Macnamara *v.* Arthur, ii. 251, 269
——— —— Jones, ii. 14, 53
——— —— Whitworth (Lord) 312
Macqueen *v.* Farquar, 418; ii. 120, 270
Macreth *v.* Symmons, 98, 99, 215
Macshane *v.* Gibb 197
M'William's case 172
Maddison *v.* Andrews 390
Maddox *v.* Maddox, ii. 119
Mader *v.* Birt, ii. 113
Magee *v.* Atkinson 44
Magennis *v.* Fatton, ii. 243
——— M'Cullough .. 264
Margrave *v.* Archbold 105
Mahoe *v.* Buckhurst 523
Main *v.* Melbourne 86
Mainwaring *v.* Baxter 171
Malachy *v.* Solper, 60; ii. .. 252
Malcomb *v.* Charlsworth, ii. .. 107
Malden *v.* Menhill, ii. 107

PAGE

Maldon's case 107
Malins *v.* Freeman, 57; ii. .. 264
Mallabar *v.* Mallabar, ii. .. 54
Mallby *v.* Christie 56
Mandeville *v.* Lackey 340
Mandeville's case 339
Mann *v.* Shefner 57
Manning, *Ex parte* 101
——— *v.* Flight 521
——— Herbert, ii. .. 86
Mansel *v.* Mansel .. 215, 216, 221
Mansfield's case, 161; ii. .. 73
Mantell *v.* Mantell 207
March *v.* Gage, ii. 15
Margetson *v.* Clowes 87
Marketson *v.* Wright 27
Marks *v.* Marks 286
Marlborough (Duke of) *v.* Godolphin (Earl of), ii. .. 48
Marlow *v.* Smith, 554; ii. .. 265
Marr *v.* Bennett, ii. 114
Marre *v.* Sly 304, 312
Marryatt *v.* Townley 360
Marsh, *Ex parte* 236
Marston *v.* Gowan, ii. .. 53, 55
Martin *v.* Mitchell 168
——— Mowlin, ii. 41, 42, 53
——— Savage 442
——— Seamore, ii. 107
——— Smith, ii. 249
Martinez *v.* Cooper, ii. 114
Martins *v.* Jolliffe 216
Marwood *v.* Turner 398
Mason *v.* Armitage, 88, 92; ii. 261, 254
——— Corder, 21; ii. .. 239
——— Mason, ii. 8
Massey *v.* Nanney, ii. 296
Mathews *v.* Hollings, ii. .. 136
——— —— Jones, ii. 87
——— —— Sewell 74
——— —— Venables 401
——— —— Wheaton 191
Maughan *v.* Mason 389
Maundrell *v.* Maundrell, 492; ii. 73, 111, 199
Mauntnorris *v.* White 535
Maybank *v.* Brooks 445
Mayfield *v.* Wadsley 78
Maynard's (Serjt.) case ii. 133, 136
Mayor of Congleton *v.* Pattison 523
Measure *v.* Gee 336
Medlicott *v.* Joyner, ii. 125
Mellish *v.* Mellish 353

PAGE
Mellish *v.* Motteux 26
Mellor *v.* Lees, ii. 320
Mence *v.* Mence 389
Mendes *v.* Mendes 359
Menzey *v.* Walker 390
Merest *v.* James, ii. 43
Merrill *v.* Frame 519
——— Rumsey 337
Merry *v.* Abney, ii. 118
Merson *v.* Blackmore 324
Mertins *v.* Adcock, 106; ii. .. 236
——— Jolliffe, ii. 114, 115, 120
Metcalfe *v.* Pulvertoft, 153, 217, 223; ii. 97
Middlemore *v.* Goodhall .. 525
Middleton *v.* Cater 381
Midland Railway Company *v.* Westcomb, ii. 92
Milbourn *v.* Milbourn, ii. .. 57
Mildmay *v.* Hungerford, ii. .. 33
——— Mildmay, ii. .. 113
Mildmay's case 171, 369
Miller *v.* Knight 214
——— Seagrove 336
Milligan *v.* Cooke 21
Milliner *v.* Robinson 353
Milner *v.* Horton 414
Milnes *v.* Branch 526
Mills *v.* Auriol, 251, ii. 207
Milward *v.* Moore 332
——— Thanet (Earl of) ii. 237
Minchin *v.* Mince 479
Minett, *Ex parte* 92
Minor, *Ex parte* 479
Minshull *v.* Minshull 336
Mitchel *v.* Neale, ii. 16, 18, 225, 265
Mitchell *v.* Dow 249
——— Harris, ii. 318
——— Hayne 53
Mocatta *v.* Lousada 391
Mogg *v.* Mogg 349, 351
Moggridge *v.* Jones, ii. 250
Mohun (Lord) *v.* Stanhope (Lord) 477
Mollet *v.* Brayne 73
Monck *v.* Butler 72
——— Cooper 520
——— Huskisson 101
Montague *v.* Jefferies, 400, 402, 442
Montague's case 508
Montesquieu *v.* Sandys 235
Montgomery, *Ex parte* 196
Moodie *v.* Reade, 418, 419, 420, 425
Moone and Fagge *v.* Heaseman, 313

PAGE
Moor *v.* Denn 466
——— Huntingdon, ii. .. 15
——— Mayhow, ii. 113
Moore *v.* Blake, ii. 237, 261
——— Butler 380
——— Edwards 82
——— Foley 523, 533
——— Moore, 444; ii. 3, 18, 41
——— Parker 343
——— Price 306
Moore's case 187
More *v.* Roswell 415
Moreton *v.* Lees, ii. 199
Morgan *v.* Bisset 510
——— Griffiths 295, 311
——— Richardson ii. .. 250
——— Slaughter 526
——— Surnam 391
——— Tedcastle, 16; ii. .. 242
——— *Ex parte* 510
Morley *v.* Bird 359
——— Cook 33
Morphett *v.* Jones 83, 84
Morrice *v.* Durham (Bishop of) 64
Morris *v.* Jones, ii. .. 6, 81
——— Prince, ii. 24
——— Stephenson .. 167, 168
Morrison *v.* Turnour 421
Morse *v.* Faulkner, ii. 51
——— Royal 233, 245
Mortimer *v.* Capper 472
——— Orchard 84
——— Petifer, ii. .. 9
Mortimer's case, ii. 24
Mortlock *v.* Butler 21, 168
Moss *v.* Mathews, 106; ii. .. 236
Mudge *v.* Mudge 282
Mulleny *v.* Jennings, ii. .. 159
Mumma *v.* Mumma .. 225, 226
Murleys *v.* Franklin 225
Murray *v.* Jones 370
——— Palmer, ii. 245
——— Wise 306
Murrell *v.* Smith, ii. 50
Muschamp *v.* Bluett 368
Musgrave *v.* Dashwood 156

N.

Nain *v.* Prowse 100
Nangle (Lesse of) *v.* Ahern, ii. 304
Nash *v.* Ashton, 412; ii. .. 204
——— Palmer, 411, ii. .. 263

PAGE

Pope *v.* Garland, ii. 54
——— Roots 238
——— Simpson 197
Popham *v.* Bamfield 285
Portarlington (Lord) *v.* Soulby, ii. 112
Porter *v.* Bradley, 315, 316; ii. 144
——— Porter, ii. 51
——— Sweetman 522
Portington's (Mary) case .. 171
Portman *v.* Mill, ii. 268
Potter *v.* Potter 443
Poulter *v.* Killenbeck 80
Powell *v.* Dillow 95
——— Edmunds, ii. .. 14, 87
——— Martyr 101
——— Pillitt 238
Powell's (Mary) case 549
Powley *v.* Walker 518
Prankerd *v.* Prankerd, ii. .. 37
President and Scholars of St. John's College, Oxford *v.* Murcott 504
Preston *v.* Barker 63
——— and Eagle *v.* Funnell, 295, 318
——— *v.* Holmes 457
——— Merceau, ii. .. 68, 87
——— Tubbin, ii. .. 82, 119
Price *v.* Canterbury (Archbishop of) 465
——— Gibson 307, 308
——— Leyburn 52, 79
——— Perrie, ii. .. 318, 319
——— Strange, ii. 265
Prideaux *v.* Prideaux . .. 64
Prince *v.* Heylin 359
Propert *v.* Parker 527
Prosser *v.* Watts, ii. 125
Proudfoot, *Ex parte* 196
Pruen *v.* Osborn 351
Prytharch *v.* Havard, ii. .. 92
Pugh *v.* Leeds (Duke of), 492, 512
Pulling *v.* Reddy 372
Pulteney *v.* Darlington 426
——— Holmes 543
Pulvertoft *v.* Pulvertoft.. 217, 223
Purefoy *v.* Rogers 311, 366
Purvis *v.* Rayer .. 44, 247, 485
Pybus *v.* Milford 468
Pye *v.* George 216, 217
——— Danby, ii. 205
——— Danbus 198
Pyke *v.* Williams 83

PAGE

Q.

Quantock, *Ex parte* 529
Queensbury Lease's case .. 494
Quick *v.* Ludburrow 521

R.

Rabbit *v.* Rakes 36
Radcliffe *v.* Warrington, 45, 238, 486
Radford *v.* Wilson, 150; ii. 42, 114
Radnor *v.* Rotheram, ii. .. 111
Rae *v.* Pung, ii. 199
Raggett *v.* Beattie 314, 353
Ramsay *v.* Macdonald 521
Ramsbottom *v.* Gosden 89
Randall *v.* Bookey 388
——— Tuchin 307, 308
Rashleigh *v.* Williams 411
Rattle *v.* Popham 490
Rawe *v.* Chichester 532, 536
Rawley *v.* Holland 467
Rawlings *v.* Jennings 312
——— Vincent, ii. 125, 232
Rawlins *v.* Burgis, 400, 401, 402
——— Greece, ii. 21
Rawson *v.* Tasburgh, ii. .. 78
Re Dearden 212
— Fanny Maria Browne .. 175
— Goddard 212, 323
Read *v.* Nash 493
——— Snell 545
Reaves *v.* Winnington 306
Reding *v.* Wilks 85
Redington *v.* Redington .. 225, 226
Redshaw *v.* Bedford Level Company 533
Reed *v.* Snell 547
——— Ward 504
Rees *v.* Philp 489
——— Lloyd, ii. 178
Reeve (In the goods of).. .. 437
Reeves *v.* Herne 372
Reg. *v.* Pit 212
Reid *v.* Shergold, ii. 24
Relingall *v.* Lloyd, ii. 124
Revel *v.* Hussey 88, 479
——— Joddrel, ii. 9
Rex *v.* Adderley 512
——— Boughey, ii. 115
——— Budd, ii 6
——— Chester (Bishop of), ii. 293
——— Coggan, ii. 15
——— Eastbourne 503

PAGE

Rex *v.* Ellis 58
——— Hendon (Lord of the Manor of), 35; ii. 15, 21, 29
——— Hollier, ii. 79
——— Lamb, ii. 79
——— Lisle, ii. 6, 81
——— Little Dean.. 541
——— London (Bishop of) .. 107
——— Lopen (Inhabitants of) 169
——— Marsh, 59, 61; ii. .. 243
——— Meer (Lord of the Manor of), ii. 15
——— Rawlings, ii. 79
——— St. John, ii. 79
——— Smith, ii. 80
——— Son, ii. 79
——— Stafford (Marquis of), 353; ii. 15
——— Water Eaton (Lord and Steward of), ii. 15
——— Wilby (Inhabit. of), ii. 17
——— Wilson, ii. 15
Reynish *v.* Martin 172
Reynolds, *Ex parte* 235
——— *v.* Nelson.. 105
——— Nelthorpe, ii. .. 236
——— Wasing 84
Rich *v.* Sydenham 158
Richards *v.* Barton, 263; ii. 132, 133, 231, 255
——— Bergavenny.. 294, 545
——— Porter 51
——— Seely 191, 508
Richardson *v.* Giffard 555
——— Langridge .. 69
——— Mitchell, ii. .. 112
——— Smallwood .. 227
Rider *v.* Kidder 387
Ridler (by Committee) *v.* Ridler 157
Ridout *v.* Pain 317
Rigby *v.* Macnamara .. 63, 66
Rigden *v.* Valier, ii. 32
Right *v.* Proctor 508
——— Sidebottom ..311, 466
——— Thomas 494
Riley *v.* Hicks.. 72
Ripley *v.* Waterworth, 386, 471, 472
Rippiner *v.* Wright, ii. 305
Rippingall *v.* Lloyd, ii. 232
Risney *v.* Selby 20
Rist *v.* Hobson, ii. 262
Riviere *v.* Bowman.. 48
Roach *v.* Wadham, 109; ii. .. 204
Roake *v.* Kidd, ii. 265
Robb *v.* Butterwick, ii. 187

PAGE

Robb *v.* Harrison 190
Roberts *v.* Dixwell, ii. 13
——— Jackson 57
——— Wyatt, ii. ..130, 229
——— Young, ... 11, 8
Robertson *v.* St. John 85
Robinson *v.* Davison, ii... 83, 110
——— Drybourgh 111
——— Fitzherbert.. 294, 545
——— Crews, ii. 21
——— Hicks 353
——— Litton 476
——— Macdonnell, ii. 290, 295
——— Musgrove, ii. .. 241
——— Page 89
——— Robinson, 335, 353, 354
——— Tonge, ii. 6
Robson *v.* Collins 92
Roche *v.* O'Brien, ii. 245
Roe dem. Jeffery, ii. 8
——— *v.* Ashburner 509
——— Avis 315
——— Bacon 307, 308
——— (d. Crowe) Baldwere, ii. 3, 11
——— d. Berkeley *v.* Archb. York 73
——— Bird 314
——— Blackett 465
——— Bolton.. 466
——— Briggs, ii. 33
——— dem. Brown *v.* Wilkinson 69
——— Charnock 68
——— Chichester 535
——— Daw 324
——— Flood 396
——— Galliers 188, 528
——— Griffiths, ii. .. 15, 21
——— Harrison, 188, 190, 527, 528
——— Heyhoe, ii. 48
——— Hicks, ii. 4, 21
——— Holmes 466
——— Jeffery, ii. 42
——— Parker, ii. 8, 9
——— Pattison 310
——— Pole, ii. 107
——— Prideaux 491
——— Quarterly 338
——— Scott and Smart.. 314, 315
——— Soley, ii. 142
——— Wilkinson 69
——— Wright 307, 308
——— York (Archb. of), 265, 492
Rofey *v.* Shallcross 21
Roger's case 492
Rogers *v.* Bradley, ii. 59
——— Downs, ii. 55

PAGE

Rogers *v.* James, ii. 295
——— Rogers, ii. 86
Roome *v.* Roome, ii. .. 53, 54
Roots *v.* Dormer, ii. 240
Rosse's case 454
Rosser *v.* Constable.. 431
——— Coombes, ii. 254
——— Ratcliffe 431
Roscommon (Countess of) *v.* Fowke 425
Rose *v.* Calland, ii... 265
——— Cunningham 52
Rosewell *v.* Prior 47
——— Vaughan, 44, 247, 485
Ross *v.* Boards, ii. 136
——— Ross, ii. 56
Roswell's case, ii. 206
Roswell *v.* Vaughan ii. 136
Roundell *v.* Currer 382
Rountree *v.* Jacob, 258; ii. .. 175
Routledge *v.* Doirel.. 347
——— Grant 52, 96
Rowden *v.* Malster, 284; ii., 3, 39
Rowe *v.* Brenton 249
——— Lowe, ii. 14
——— Teed 82
Ruberry *v.* Jervoise 534
Rucker *v.* Cammeyer .. 51, 75
Rumbold *v.* Rumbold, ii.; 36, 53, 54
Rumsey *v.* Rawson.. 72
Rundall *v.* Eiley 335, 373
Rundle *v.* Rundle, ii. 36
Rushbrook *v.* Hood, ii. 323
Rushden's case 520
Rushley *v.* Mansfield 162
Rushout, Hon. Anne (In the goods of) 438
Russel *v.* Hammond 227
Rust *v.* Whittle 167
Ruttand *v.* Ruttand 554
Ryall *v.* Ryall 224, 387
Ryan *v.* Cowley 351
Ryder *v.* Kidder 224
——— Wager 402
Ryle *v.* Haggie 98
Rymes *v.* Clarkson 549

S.

Sabberton *v.* Sabberton 545
Sabine *v.* Barrell, ii. 321
Sacheverell *v.* Frogate 516
Saffin's case 282, 514
St. John *v.* Benedict, ii. .. 261

PAGE

St. John *v.* Turner, 210; ii... 108
St. Saviour's (Churchwardens of) *v.* Smith.. 424
Sagittary *v.* Hide 327
Saile *v.* Kitchingham 523
Salisbury (Lord) *v.* Bagot .. 216
——— Wilkinson 53
Salmon *v.* Hays 548
Sammer *v.* Force, ii. 11
Samme's case, ii. 168
Sampson *v.* Easterby 525
——— Pattison, ii. .. 321
——— Sampson, ii. .. 54
Sanders *v.* Dehew 215, 216
——— Hord 210
Sanderson *v.* Walker, 55, 233, 235
Saunders *v.* Dehew, ii. 110
——— Leslie 100
——— Owen 221
——— Wakefield 92
Saunders's case 477
Saunderson *v.* Jackson, .. 91, 421
——— Stanhope, ii. .. 41
Savage *v.* Foster, ii. 108
——— Taylor, 88; ii. .. 264
Saville *v.* Blackett, ii. 75
——— Saville, ii. 543
Sawtell *v.* London, ii. 302
Say and Sele's (Lord) case, 336; ii. 166
Sayer *v.* Hughes 548
——— Masterman 336
Sayle *v.* Freeland 150
Scatterwood *v.* Edge 370
Schneider *v.* Norris 91
Scholastica's case 373
Scorell *v.* Boxall 78
Scott, *Ex parte* 529
——— *v.* Alberry, 307, 309; ii. 58
——— Fenhoulet 408, 539
——— Hanson 20
——— Kettlewell, ii. 44
——— Murray, 88; ii... .. 264
——— Nisbett 63, 64
——— Smart 315
——— Tyler 372
Scrafton *v.* Quincey, ii. 102
Scroope *v.* Scroope 225
Seagood *v.* Hone, ii. 33
——— Meale .. 85, 86, 94
Seale *v.* Barters 452
——— Seale 347, 545
Seaman *v.* Bawdrey.. .. 21, 22
Searle *v.* Keaves 79
——— Kitner, ii. 44

PAGE

Seawood *v.* Hone, ii. 31
Seddon *v.* Senate, ii. 203
Selby *v.* Selby 98
Selsey (Lord) *v.* Rhoades .. 494
Selwyn *v.* Selwyn, ii. 166
Semain *v.* ———, ii. 48
Semphill *v.* Bailey 373
Sentance *v.* Poole 159
Seton *v.* Slade 92
Sevier *v.* Greenway, ii. 321
Sewage *v.* Carroll 84
Seymour *v.* Delaney, ii. 261
Seymour's case 185, 283
Shackleton *v.* Sutcliffe 15
Shales *v.* Shales, ... 226
Shannon *v.* Bradstreet, 87, 495, 497
Shapland *v.* Smith, 343; ii. .. 265
Sharpe *v.* Rhoade, ii. 270
Shaw *v.* Bower, ii. 84
——— Bull 307
——— Thompson, ii. 21
——— Weigh 325, 351
Shearman, *Ex parte* 528
Sheath *v.* York 404, 405
Shecombe *v.* Hawkins 492
Shee *v.* Hale 374
Sheers *v.* Glasscock 426
——— Jeffery 315, 316
Sheffield *v.* Orrery 37, 548
——— Ratcliffe 207
Shelburne *v.* Biddulph .. 525, 535
Sheldon *v.* Barnes 388
——— Cox, ii. 119
——— Drummond, ii. 119
Shelley's case, 334, 340, 342, 343, 345, 349, 352; ii. 13, 32, 201
Shelley *v.* Nash, ii. 244
Shelton *v.* Livins 11
Shepherd *v.* Hall, ii. 293
——— Keatley, 31, 485; ——— Titley, ii. 171
Shepperd *v.* Gibbons 359
Sherwood *v.* Robins 15
Shippey *v.* Denison .. 51, 90, 94
Shirley *v.* Stratton, ii. .. 241, 264
Shore *v.* Bellingsley 359
Short *v.* McCarthy 273
——— Smith 430, 436
Shortridge *v.* Creber 340
——— Lamplugh, 288, 514
Shove *v.* Pincke 401
Shubrick *v.* Salmond 519
Sidebottom *v.* Berrington .. 262
Sidney *v.* Skelley 389

PAGE

Silvester *v.* Wilkinson 343
——— Wilson .. 293, 343
Simon *v.* Cornelius 86
——— Motivos, ii. 257
Simpson *v.* Clayton 525
——— Gutteridge, ii. .. 73
——— Hornsby .. 304, 467
——— Southwood, ii. .. 34
——— Vicars 383
Simpson's case, ii 34
Sims *v.* Doughty 297
Skeeles *v.* Shearley, ii. 108
Skett *v.* Whitmore 387
Skinner *v.* McDouall 83
——— Stacey 236
Skipwith *v.* Shirley, ii. 178
Sloper *v.* Fish, ii. 265
Small *v.* Atwood 20
Smartle *v.* Penhallow, ii. 10, 37
——— Scholler 467
Smee *v.* Bryer 421
Smith *v.* Ashton, ii. 53
——— Atterley, ii. 86
——— Baker, 387; ii. 36, 53, 57
——— Camelford 387
——— Carr 158
——— Clarke 60
——— Codron 421
——— Compton 414
——— Death, ii. 77
——— Dickenson 105
——— Evans 91, 421
——— Frederick 548
——— Garland, ii. 97
——— Guyon, 259; ii. .. 84
——— Hibbard, ii. 170
——— Inggs, ii. 28
——— Lowe 230
——— Lowther 217
——— Oliver 446
——— Rosewell, ii. 108
——— Smith, ii. 29, 74
——— Spooner, 60; ii. .. 252
——— Surman 78
——— Tindall 323
——— Triggs 456
——— Watson 96
Smith and Davies' case 368
Snag *v.* Fox, ii. 15
Snell *v.* Reade 313
Sneyd *v.* Sneyd, ii. 11, 198
Snow *v.* Cutter, 343, ii. .. 42
Some *v.* Taylor, ii. 242
Somerset (Duke of) *v.* France, ii. 9
Sonday's case 170

PAGE
Souter *v.* Drake, .. 44, 247, 485
Southampton *v.* Brown 515
——— (Lord) *v.* Hertford (Marquis of) .. 294, 546
Southby *v.* Hutt ..31, 32, 33, 39
Southcott *v.* Stowell 339
Southgate *v.* Chaplin 411
Sowarsby *v.* Lacy, 219; ii. .. 86
Sowerby *v.* Brooks, ii. 117
Sowle *v.* Welsh 411
Spalding *v.* Shalmer, 218; ii. 84, 85
Sparrow *v.* Hardcastle 398
Spencer's case, 518, 522, 523, 525
Spicer *v.* Spicer 323
Spiers *v.* Higgons 158
Spiller *v.* Westlake, ii. 247
Spittle and Lavender's case .. 44
Spratt *v.* Jeffery 485
Spring *v.* Beles, 394; ii. .. 52
Springwell *v.* Allen 27
Spurgeon *v.* Collier, 216; ii. 318
Spurrier *v.* Elderton 52
——— Fitzgerald .. 81, 82
——— Hancock 197
Spyve *v.* Topham, 296; ii. .. 186
Squire *v.* Camp 48
——— Tod, ii. 255
Stackpole v. Beaumont 372
Stafford's (Lord) case 376
Staines *v.* Morris, 521; ii. 213, 270
Stainforth *v.* Fox 508
Stamford *v.* Hobart .. 295, 346
Stanhope *v.* Tucker 209
Stanley, *Ex parte* 212
——— *Re*, ii. 92
——— *v.* Lennard 303
——— Stanley 287
Stansfield *v.* Habergham, ii. .. 33
Stanton *v.* Barnet, ii. 10
——— Sadleir, ii. 109
Stapleton *v.* Scott, 24; ii. .. 265
Starkey *v.* Brookes 388
——— Starkey, ii. 13
Statham *v.* Bell 370
Stapilton *v.* Stapilton 288
Staunton *v.* Pecke 356
Stead *v.* Berrier 445
——— Cragh 169
——— Leddart 109
Stephens *v.* Guppy, ii. 78
——— Olive 227
Stephenson *v.* Hayward, ii. .. 97
——— Oliver .. 224, 225
Stevens *v.* Bateman, ii. 107
——— Douston 223
PAGE
Stevens *v.* Gerrard 420
——— Glover 316
Stevenson *v.* Glover 317
——— Lambard 522
Stewart *v.* Alliston, 13, 14, 28, 88; ii. 240, 241
Stileman *v.* Ashdown, 226; ii. 80
Stiles *v.* Cowper 87
Stock *v.* Rook 14
Stokes *v.* Moore 90
——— Russel 409
Stone *v.* Bayle, ii. 165, 166
——— Evans 523
——— Stone 32
——— Theed, ii. .. 532, 536
Stonehouse *v.* Evelyn 421
Stonelake *v.* Bubb, ii. 302
Stones *v.* Heurtley .. 359, 361
Story *v.* Johnson 163
—— Windsor (Lord), ii. .. 113
Stow *v.* Whiting 73
Strahan *v.* Sutton 381
Strathmore *v.* Bowes 477
Stratton *v.* Grimes 373
——— Payne ..294, 545, 548
Streatfield *v.* Streatfield .. 378
Street *v.* Brown 110
Strickland *v.* Strickland .. 469
Strode *v.* Falkland (Lord), ii. 53, 54, 55
——— Perryer 445
Stroud *v.* Marshall 157
Strudwicke *v.* Strudwicke, ii. 53
Stuart, *Ex parte* 198, 230
——— *v.* Bruce 359
Sturge *v.* Storr, ii. 107
Style *v.* Hearing 518
Styles *v.* Wardle 513
——— Walford 307
Suffolk (Earl of) *v.* Howard, ii. 54
——— (Countess of) *v.* Wroth 492
Sullivan *v.* Sullivan .. 405, 406
Sutton *v.* Jewkes 372
——— Stone, ii. 54
——— Sutton 436
Swain *v.* Holman 505
Swanborough *v.* Coventry, 47, 48
Swane's case, ii. 11
Swannock *v.* Lydford, ii. .. 111
Sweet *v.* Southcote, 216; ii. .. 120
Sweetapple *v.* Bindon 348
Swift *v.* Roberts 400
Sykes *v.* Sister, ii. 170
Syles *v.* Cooper, ii. 108
Symon *v.* Turner 292

PAGE
Symons *v.* James 33
Sympson *v.* Hornsby .. 328, 445
——— James 292
——— Southern, ii. .. 34
——— Southwood, ii. .. 34
——— Turner 303
Syms' case 151

T.

Talbot *v.* Talbot 406
Taltarum's case 170, 368
Tanner *v.* Morse 309
——— Smith 106
——— Wise 307
Tasburgh *v.* Echlin, ii. 321
Taster *v.* Marriott 535
Tatam *v.* Chaplin 522
Tate *v.* Clarke 351
Tawney *v.* Crowther .. 51, 94
Taylor *v.* Baker .. 217, ii. 127
——— Cole 223
——— Horde .. 497, ii. 155
——— Shaw 170, 368; ii. 3, 41
——— Shum 189, 524
——— Stibbert, ii. 72, 114, 127
——— Taylor .. 226; ii. 53
——— Webb .. 304, 312, 320
——— Wheeler, ii. .. 29, 107
Teme's case 562
Temple *v.* Baltinglass 498
——— Brown 239, 272
——— Webb 399
Tendril *v.* Smith, ii. 58
Tenny *v.* Agar 366
Terrel v. Page 309
Tetley v. Tetley, ii. .. 233, 289
Thayer *v.* Thayer 221
Thelluson *v.* Woodford 545
Theobald *v.* Duffoy 504
Thickness *v.* Vernon 359
Thomas, *Ex parte*, ii. 170
——— *v.* Cooke .. 69, 74, 521
——— Davis, ii. 187
——— Evans 432
——— Howell 371
——— Pemberton 529
——— Phelps 310
——— Popham, ii. 159
——— Thomas 390
Thomlinson *v.* Deighton .. 492
Thompson *v.* Atfield .. 289; ii. 106
——— Lawley 286
——— Miles .. 418; ii. 130, 249, 250

PAGE
Thompson *v.* Nelson 381
——— Piggott 424
Thong *v.* Bedford 336
Thorley *v.* Cooke 106
Thorne *v.* Thorne 289
Thring *v.* Edgar, ii. 113
Thursby *v.* Plant 521
Thrustout *v.* Denny 548
Thwaites *v.* Mackerson 272
Tickner *v.* Ticker 399
Tidwell *v.* Ariel 445
Tilbury *v.* Barbatt 318
Tilley *v.* Collyer .. 303, 304, 312, 320
——— Simpson 308, 309
Tilney *v.* Norris 522
Timbrel *v.* Timbrel, ii. 87
Timewell *v.* Perkins .. 307, 309
Tippin *v.* Cosin 343, 470
Tipping *v.* Bunning, ii. 23
Tisdale *v.* Essex 411
Tittey *v.* Davis, ii. 142
Titus *v.* Perkins, ii. 38
Todd *v.* Hoggart, ii. 254
Tollett's case 420, 425
——— *v.* Tollet, ii. .. 53, 54, 106
Tompkins *v.* Tompkins, ii. .. 86
——— White 11
Tomlinson v. Dighton 165
Tonkins *v.* Ennis, ii. 96
Took *v.* Glasscock 167
Toole *v.* Medlicot 85
Tooley *v.* Gunnis 353
Toovey *v.* Bassett 303, 314
Toulmin *v.* Steer, ii. 119
Tourville *v.* Nash, ii. 86
Tovey *v.* Pitcher 524
Towell *v.* Cornish, ii. 15
Towers *v.* Moore, ii. 20
Townley *v.* Gibson 249
Townsend *v.* Champernown .. 17; ii. 78
——— (Marquis of) *v.* Stangroom, 89; ii. 264
——— *v.* Westmacott 227
——— Wilson 332
——— Wyndham 541
Tracey *v.* Hereford 477
Trafford *v.* Bochin 548
Trefusis *v.* Clinton 66
Tregonwell *v.* Strahan and Harrison 171
Treme *v.* Wright 33
Trevanion *v.* Mosse, ii. 112
Trevellian's case 442
Trevelyan *v.* Charter 235

PAGE

Tribourg *v.* Lord Pomfret, ii. 142
Trinity House *v.* Ryal, ii. .. 270
Tristram *v.* Baltinglass 494
Tritton *v.* Foote 533
Trotter *v.* Oswald 548
Trower *v.* Newcombe .. 20, 28
Trueman *v.* Loder 51
Trussel's case 521
Trymmer *v.* Jackson 420
Tuckerman *v.* Jefferies 361
Tudor *v.* Anson, ii. 53, 54, 55, 56, 57
Tufnell *v.* Page, 307; ii., 14, 48, 50
Tukely *v.* Hawkins, ii. 16
Tunstal *v.* Trappes, 40; ii. 109, 119
Turner, *Ex parte*, ii. 55
——— *v.* Benny, ii. 16
——— Hardie 327
——— Harvey 28
——— Hodges 191
——— Kelt 328
——— Richardson 530
Turnley *v.* Hartley 95
Twining *v.* Morrice, 21, 59, 61; ii. 264
Twiselton *v.* Griffiths, ii. .. 244
Twyford *v.* Trail 553
Tylden *v.* Hyde 330
Tyler *v.* Bennett 79
Tyte *v.* Williams 295
——— Willis 318

U.

Ulrich *v.* Litchfield 297
Upton *v.* Basset, 467; ii. .. 97
——— Ferrers (Lord) .. 63
Ustick *v.* Bawden 444
Utwatt *v.* Bryant 307

V.

Vaillant *v.* Dodemede 524
Van *v.* Corpe 527
Vancouver *v.* Bliss, ii. .. 266, 269
Vandmanker *v.* Desborough .. 536
Vane *v.* Barnard (Lord), 476, 478; ii. 133
Vaughan *v.* Atkins, ii. 15, 32, 51
——— Thomas, 88; ii. 264
Vawser *v.* Jeffery 398, 400
Veale *v.* Nicholls, ii. 293
Ven *v.* Howell, ii. 37
Venables *v.* Morris 343, 344
——— Thorne 292
PAGE
Ventrice *v.* Goodcheap .. 520, 521
Verner *v.* Winstanley, ii. .. 321
Verney *v.* Carding 40
——— Verning 536
Vernon, *Ex parte* 387
——— *v.* Jones 399
——— Keys, ii. 241
——— Smith 523, 525
——— Verney 539
Villa Real *v.* Galway 382
Villiers *v.* Villiers 325
Vincent *v.* Lee 331
Vizard *v.* Longdale, ii. 74
Vyvyan *v.* Arthur 522, 523

W.

Waddington *v.* Frances 109
Wadsworth's case, ii. 44
Wagstaffe *v.* Wagstaffe, 292; ii. 48
Wain *v.* Walters 92
Wainwright *v.* Elwell, ii. 23, 53, 58
Wairn *v.* Prowse 100
Wake *v.* Wake 383
Walford *v.* Beaseley 92
Walker's case 520, 524
——— *v.* Burrows 277
——— Constable, 51; ii. 253, 256, 258
——— Flamstead, ii. .. 84, 87
——— Hale 289
——— Horsfall, 110; ii. .. 247
——— Moore, ii. .. 129, 256
——— Prestwich, 98; ii. .. 89
——— Smallwood, ii., 84, 87, 116
——— Walker, 548; ii. 5, 20
Wall *v.* Stubbs, ii. 241, 264
——— Thurborne 390
Walter *v.* Bartlett, ii. 4
——— Drew .. 315, 317, 354
Walters *v.* Morgan 82
Walton *v.* Merry 202
——— Waterhouse, ii. .. 519
Walwyn *v.* Lee, ii. 113
Wankford *v.* Wankford 553
Wanley *v.* Scowbridge 86
Ward *v.* Baugh 384
——— Garnons, ii. 178
——— Moore 401
Warde *v.* Warde, ii. 52
Ware *v.* Polhill .. 294, 545, 546
Waring *v.* Hoggart, 13; ii. .. 241
——— Mackreth .. 44, 247
Warmstrey *v.* Tanfield 219

PAGE

Warne *v.* Sawyer, ii. 3
Warneford *v.* Thompson .. 330
Warner *v.* Hargrew, ii. .. 16
Warsopp *v.* Abell, ii. 24
Warwick *v.* Bruce 75, 77
——— Warwick, ii. .. 119
Watson *v.* Birch 64
——— Hemsworth Hospital 534
——— Reynolds, 60; ii. .. 252
Watts *v.* Bullas, ii. .. 54, 56
——— Creswell, ii. 107
——— Friend 79
——— Fullerton 400
Weale *v.* Lower 150
Webb *v.* Hearing 323
——— Paternoster 71
——— Rorke 236
——— Russell, 409; ii. .. 142
Webster *v.* Webster 359
Weeks *v.* Gore, ii. 54
Welby *v.* Welby 379
Welcden *v.* Elkington 555
Weldon *v.* Dux Ebor 209
——— Ralleson 209
Welford *v.* Beazeley .. 92, 96
Weller *v.* Hudson 51
Wellington *v.* Mackintosh, ii. 318
Wesbeach *v.* Kennedy 421
West's case 420
West *v.* Berney, ii. 77
——— Moor 76
——— Vincent 66
Western *v.* Russell 92
Westfaling *v.* Westfaling .. 472
Westmore *v.* Hob, ii. 30
Westmoreland *v.* Smith .. 223
Weston *v.* Berkeley, ii. 113
——— Russell, ii. 243
Whalcy *v.* Bagenal, 82, 85, 89, 96
Wharton *v.* King, ii. 38
Whate *v.* Booth, ii. 85
Wheate *v.* Hall, ii. 255
Wheeler *v.* Bingham 373
——— Bramah 530
——— Collier, 59; ii. .. 243
——— D'Estene 84
——— Warney 374
Whelpdale *v.* Cookson .. 233, 234
Whetstone *v.* Bury 292
Whichcot *v.* Fox 180, 531
Whistler *v.* Webster .. 379, 380
Whitbread *v.* Brockhurst, 82, 85
——— Jordan 32
——— Young, ii. . 116
Whitchurch *v.* Bevis .. 82, 85

PAGE

Whitchurch *v.* Whitchurch, 408, 439
White *v.* Chapman 56
——— Damon, ii. .. 259, 261
——— Driver 160
——— Foljambe.. 45, 197, 486
——— Fussil 233
——— Hillacre, ii. 142
——— Nutt 478
——— Proctor 51, 92
——— Sansom 223
——— Thornburgh, ii. .. 42
——— White 537
——— Wilson, 63, 64, 160, 162
Whitehead *v.* Jennings 444
Whitelock's case 15, 16
Whitfield *v.* Bewett 477
——— Weedon 518
Whiting *v.* Wilkins 312
——— White .. 14, 108
Whitmore *v.* Trelawny 359
Whitton, *Ex parte*, ii. 92
Widderbourne *v.* Carr 57
Widdowson *v.* Harrison .. 349
Widlake *v.* Harding 311
Wigg *v.* Wigg, ii. 86
Wilan *v.* Lancaster, ii. 60
Wild's case 352
Wilde *v.* Forte, 105; ii. 78, 236, 250, 255
Wilkes *v.* Bodington, ii. .. 117
——— Broadbent, ii. .. 7
——— Holmes 425
Wilkins *v.* Fry, ii. 213
Wilkinson *v.* Merryland.. .. 309
——— Robinson 307
——— South 546, 548
——— Weddell, ii. .. 21
Willan *v.* Lancaster, ii. .. 50, 60
——— Willan 533
Willett *v.* Winnell, ii. 319
Williams *v.* Bland 553
——— Bolton, ii. 106
——— Bosanquet 523
——— Brown 356
——— Chitty, ii. 74
——— Code 389
——— Day 476, 478
——— Edw. Good, 440; ii. 270
——— Jay 272
——— Jekyll 472
——— Lonsdale, 191; ii. 15
——— Millington 54
——— Owen, ii. 321
——— Porter 372
——— Williams 478

PAGE
Williamson *v.* Curtis, 259; ii. 84, 85, 87
Willing *v.* Baine 359
Willington *v.* Willington .. 404
Willis *v.* Lucas 467
——— Willis 386
Willoughby *v.* Willoughby, 215; ii. 109, 110, 120
Wills *v.* Palmer, 287, 337, 339, 468
——— Stradling 83, 84
Wilmot *v.* Wilkinson 33
Wilshire *v.* Sims 54
Wilson *v.* Allen, ii. 56
——— Armourer, ii... .. 194
——— Chisholm 508
——— Greenwood 528
——— Freane 163
——— Major 389
——— Robinson.. ..306, 311
——— Sewell 497
——— Townsend 383
——— Tucker 272
——— Weddell, ii. 21
——— Wigg 521
——— Winchester, ii. .. 248
Winch *v.* Winchester, 16; ii. 242
Winchester (Bishop of) *v.* Knight 249
Windsor *v.* Pratt 436
Winged *v.* Lefebery 40
Wingfield *v.* Whaley, ii. .. 237
Winslow *v.* Fisher 536
——— Tighe 532
Winter *v.* Anson (Lord) 98, 99, 100
——— Brockwell 72
——— Devereaux 167
——— Fearon, ii. 293
——— Mair 57
Wintor *v.* Jerningham, ii. .. 19
Wiseman *v.* Beake, ii. 244
Witchcot *v.* Louch 330
Withers *v.* Pinchard 167
——— ——— Withers, 387; ii. 36
Withy *v.* Cottle 238
Wood *v.* Downes 235
——— Griffiths 21
——— Lake 70, 71
——— Norton, ii. 317
Woodliffe *v.* Drury.. 287
Woodroffe *v.* Titterton, ii. .. 266
Woodrow *v.* Glazebrook, ii. .. 247
Woodward *v.* Glassbrook .. 466
Woollam *v.* Hearn, 88; ii. .. 264
Wootton *v.* Edwin 516
——— Steffenoni 503
Worlick *v.* Pollet 548
Worseley *v.* Scarborough, ii. 83, 119
Worsley's (Sir Francis) case.. 420
Wray *v.* Steele 387
——— Williams, ii. 111
Wright *v.* Barlow 419
——— Barton 418
——— Booth 162
——— Dannah 93
——— *Ex parte* 99
——— Hall 396
——— Holford 350
——— Horne 396
——— Howard, ii. 269
——— Kemp, 349; ii. .. 32
——— Maunder 262
——— Pearson .. 286, 336
——— Proud 235
——— Russell 311
——— Smith 494
——— Trevesant 508
——— Wakefield 418
——— Wakeford 419
——— Walthoe 548
——— Wright, 153, 310, 389, 369
Wrottesley *v.* Adams 539
Wych *v.* Packington 388
Wymonsel and Hayland, ii. .. 109
Wyndham *v.* Chetwynd .. 428
Wynn *v.* Williams, 17, 274; ii. 72, 111
Wynne *v.* Cookes, ii. 43
——— Griffith, ii. 263
Wykham *v.* Wykham 221

Y.

Yates *v.* Boen 158
——— Compton ..326, 330, 332
York *v.* Stone 151
Young *v.* Waterpark (Lord) .. 218
——— Young, ii. 188

Z.

Zagury *v.* Jackson 479
——— Woolstan 438
Zouch *v.* Parsons 163

INDEX.

ABANDONMENT:
of contract, its operation on a previous will, 402.

ABATEMENT:
in price, for a deficiency in quantity or quality of estate, when allowed, 16, 26.

ABROAD:
conveyances of property situate, if made in England, must be stamped in like manner as if the property was situate here, ii., 303.
instruments executed may be stamped without penalty on being produced before the commissioners within two calendar months after the same shall have been received in the United Kingdom, ii., 303.

ABSOLUTE COVENANTS:
proviso for releasing mortgagor from, upon his entering into qualified, with purchaser, No. VII. clause 11, pp. xxv., xxvi.

ABSTRACT:
clauses stipulating that vendor will deliver at his own expense, 30, 45, 114, 117, 128, 130, 133, 137, 139, 146.
preliminary observations with respect to the preparation of, 238.
duties of vendor's solicitor with respect to the delivery of, 238.
also of purchaser's solicitor with respect to, 238.
by whom to be prepared, 239, 240.
heading of, 241, 242.
root of title, 242.
pedigree should accompany, when, 244.
of titles relating to tithes, how to be prepared, 245.
how the various documents should be set out in, 245.
when double, will be necessary, 246.
of advowson, how to be prepared, 249.
order in which the various document should be arranged, 250—258.
how the various clauses should be placed, 253.
deeds how to be abstracted in, 253, 252.
wills, 251—259.
acts of Parliament, 251.
stamps impressed on deeds ought to be mentioned in 252.
execution of deeds and other documents should be stated in, 252.
memorandum of receipt should also be mentioned in 258.
attendant term should be set out in, 258.

ABSTRACT—*continued.*
mesne assignments may be recited shortly, 258.
fines and recoveries how to be set out in, 260.
fact of registration, if necessary, should be noticed in, 260.
commission or fiat of bankruptcy, how to set out in, 260.
judgments (if any) should be mentioned in, 263.
also decrees, 263.
descents should be stated according to the facts, 263, 264.
how matters of fact should be set forth in, 264.
cancellation, alteration, or erasure of documents should be mentioned in, 265.
of leasehold property, how to be prepared, 267, 268.
of copyholds, how to be prepared, 269, 270.
practical observations relative to the perusal of, 271—298.
propriety of submitting to counsel, 272.
copy of contract or conditions of sale should accompany, when so submitted, 272.
practical suggestions upon the perusal of, 273, 275.
how to analyse, 275.
requisitions or objections to title, how usually inserted, 277, 278; ii., 121.
legal operation of the various documents set out in, 279—298.
course vendor's solicitor should adopt on receiving back from counsel, ii., 121.
comparison of, with title deeds, ii., 122, 124.
ought to be made by vendor's solicitor before submitting it to counsel why, 122, 123.
how the comparison should be made, 124.
vendor, how far bound to produce all documents in verification of, ii., 124.
to whom the property in, belongs, ii., 128.
purchaser bound to return it, in case the contract is rescinded, ii., 128, 131.
trover may be maintained for, when, ii., 180.
must be prepared and delivered at vendor's expense, ii., 229.

ACCEPTANCE OF RENT:
will confirm a voidable lease, when, 163, 500.

ACCIDENT:
destruction of will by, no revocation, 435.
erasure by, will not invalidate instrument, ii., 236.

ACCOUNTANT TO THE CROWN:
crown had formerly a lien upon the lands of, even after alienation to a purchaser, ii., 78, 79.
law respecting, how altered by recent enactments, 79, 80.
parish collector of taxes not considered as, 80.
purchaser from, how protected, 79, 80.

ACKNOWLEDGMENT:
costs of, by married women, in the absence of a stipulation to the contrary, must be borne by vendor, 35.

ACKNOWLEDGMENT—*continued.*
clause stipulating that these expenses shall be defrayed by purchaser, 36.
practical observations respecting, 164, 165.
it must be ascertained that they have been properly taken, ii., 137.
covenant for, by husband, No. IX., clause 7, p. xxxi.; No. XX., clause 8, p. lx.
memorandum of, to be indorsed on deed, No. X., p. xxxiii.
form of certificate of, No. XL., p. xxxiv.

ACRES:
"more or less," annexed to the descriptive quantity of, how far a protection to vendor, 16.
proportion which local bears to standard, should be specified in agreement or conditions of sale, 16, 17.
wilful misdescription as to quantity of, will vitiate sale, 38.
form of clause stipulating that number of, is supposed to be correct, but is not warranted to be so, 38, 138.
stipulation that compensation will be allowed for deficiency in quantity of, 138.

ACTION:
wilful misrepresentation of property will render party liable to, 20.
will lie for slandering title, 60; ii., 252.
of vendor's remedies by, for breach of contract, ii., 246, 258.
what evidence will require to support, ii., 246, 251.
for use and occupation, ii., 251.
when vendor will be restrained from bringing, ii., 251, 252.
of vendor's remedy for slander of title, 252.
requisites to support, 252.
of purchaser's remedies by, ii., 253.
what will be sufficient evidence of contract in, ii., 253, 254.
may be maintained by personal representatives when, ii., 255.
what damages may be recovered, ii., 255, 256.
for money had and received against vendor, ii., 256.
will lie against auctioneer when, ii., 257.

ACT OF BANKRUPTCY (see BANKRUPTCY.)

ACT OF PARLIAMENT:
how to be abstracted, 251.
printed form of, should accompany abstract, 262
public, notice of, to all mankind, ii., 116.
aliter of a private act, ii., 116.

ACTS:
performed without apparent cause will require explanation, when, 277.
directed to be done will cause the fee to pass, when, 352.

ADMINISTRATION:
letters of, should be abstracted, and how, 264.
best proof of intestacy, 276.

ADMINISTRATION—*continued.*
out of what court it should be taken, 549, 550.
distinction as to the operation of, when taken out of an inferior, or from the Prerogative Court, 551.

ADMINISTRATORS:
have an absolute power of disposition over their intestate's effects, 222.
disabled from purchasing their intestate's effects, 229.
bound by covenants of their intestate, 251.
representation not transmissible through, 552.
must be admitted to copyholds which devolve upon them in that character, ii., 25.
may file a complaint instead of proceeding by bill in equity, ii., 272.

ADMISSION:
copyholds pass by, how, ii., 14.
said to be the formal part of a copyhold assurance, ii., 22.
its effect and operation, ii., 22.
essential to confer a legal estate, ii., 22.
to enable the surrenderee to surrender, ii., 22.
devisee had formerly no estate until, ii., 22.
recent enactments respecting, ii., 23.
of heir necessary where copyholds are devised by an unsurrendered will, ii., 23.
of tenant for life will enure also to remainderman, ii., 23.
of one joint tenant will enure to all, ii., 24.
now not necessary to pass an estate from one joint tenant to another, ii., 24.
same rules applies to co-parceners, ii., 24.
but not to tenants in common, ii., 25.
necessary when copyholds devolve upon personal representatives, ii., 25.
not now necessary when copyholds devolve upon assignees of bankrupts, ii., 25, 26
quære, if necessary in the case of assignees of insolvents, ii., 26.
who are the necessary parties to, ii., 28.
whether lord may be compelled to admit by attorney, ii., 28.
customary form of, should be strictly adhered to, ii., 28.
when equity will relieve against informality incurred in, ii., 28.
title of purchaser perfected by, ii., 28.
no fine will become payable until, ii., 28.

ADVANCEMENT:
purchase by a father in the name of a wife or child will be when, 224—227.
illegitimacy of the child will not rebut this construction, 224.
nor the purchase being made in the joint names of father and son, 225.
by grandfather, if father be dead, will be considered in the same light as if made by the latter, 225.
aliter, if the father be living, 225.

ADVANCEMENT—*continued.*
or the child be already advanced, 225.
what acts of the father will repel the presumption of, 226.
purchases by way of, when considered as fraudulent against creditors, 226, 227.

ADVERTISEMENTS:
practical directions for preparing, 9.
course to be pursued respecting, when the property is sold under a decree, 10.

ADVOWSON:
form of agreement to purchase, 139.
form of agreement for sale of next presentation to, 144.
practical observations relative to the title of, 224, 225.
presentations to evidence of seisin, ii., 128.
form of conveyance of, in fee, No. XXXVII., p. ci.

AFFIDAVITS:
of parties formerly required as evidence of seisin, ii., 127, 128.
declaration in pursuance of statute 6 Will. 4, now substituted for, 128.

AGENT:
name of vendor's, should be mentioned in advertisements, 9.
auctioneer, when so considered both as to vendor and purchaser, 55, 57.
when for vendor only, 55.
authority of, may be revoked, how, 29.
vendor's solicitor will become, for purchaser, if allowed to prepare the purchase deed, 40.
notice to, considered as notice to principal, when, 40; ii., 118.
if he signs as such, it should be so stated, 43.
form of agreement by, 42, 43, 117.
to constitute, within the first section of the Statute of Frauds, the appointment must be by writing, 68, 73.
under the fourth section, a parol appointment will be sufficient, 75, 92.
signature of, binding upon principal, 92.
neither of the principals, contracting parties can be for the other, 93.
signature by clerk insufficient to bind principal, when, 93.

AGREEMENT:
matters antecedent to, should be first considered, 2.
practical remarks relative to stipulations in, 8.
short form of, should be attached to conditions of sale, 42.
forms of, to be signed by vendor and purchaser, 42, 43.
forms of by agent, 43.
terms of should be explicitly set forth, 67.
parol evidence generally inadmissible to explain the terms of, 67, 87.
what considered as, within the first section of the Statute of Frauds, 68, 73.
requisites to the validity of, under the fourth section, 75, 87.
parol, when executed, how far binding, 79.
confessed, will take case out of the Statute of Frauds, when, 81, 83.

AGREEMENT—*continued.*
also part performance, when, 83, 87.
part performance of, how far binding upon representatives, 86, 87.
what will amount to a sufficient signature of, 91, 92.
binding on party signing, though unsigned by other contracting party, 92.
may be entered into by agent, when, 92.
essential to constitute a valid memorandum of, 93, 94.
auctioneer's receipt will not amount to, unless it contains the whole terms of, 94.
how established through the medium of a correspondence by letter, 95.
practical instructions for framing, 97, 108.
must be stamped before it can be given in evidence, 108, 112.
observations upon the stamp acts relating to, 108, 110; ii., 286, 287.
binding on tenant in tail but not upon his issue, 150.
remedies for breach of, ii., 246, 270.
of remedies at law, 247, 258.
of remedies in equity, 259, 270.

AGREEMENTS, PRECEDENTS OF FORMS OF:
short forms of, to be annexed to conditions of sale, 42, 43.
for the sale of a freehold estate, 117, 122.
clauses of, adapted to various purposes, 123—127.
for the purchase of leasehold property, 128—129.
for the sale of freehold and leasehold premises determinable on lives, 130, 132.
for the purchase of copyholds of inheritance, 133, 134.
that part of the purchase money shall be invested until a minor (a conveying party) shall attain twenty-one, and execute the conveyance, 135.
for repayment of purchase-money on failure of a contingent event, 136.
for the purchase of a reversion, 137.
for the sale of an advowson, 139, 140.
for the purchase of the next presentation, 141.
for the sale of a contingent estate, 143.
for the enfranchisement of copyholds, 146, 147.

ALIENS:
incapable of holding lands, 208, 231.
recovery suffered by, has been holden good, when, 208, 231.
cannot be protector of a settlement, 208.
Jews, simply as such, not considered to be, 208 (note *a*.)
not disabled from purchasing, but only from holding lands, 208.
how far empowered to hold leasehold premises for the purpose of trade, 231, 502, 503.
if naturalized may hold lands subsequently acquired but not those acquired previously, 231.

ALIENS—*continued.*
whether an alien husband can acquire any lands in right of his wife, 503, 504.
occupation of premises by, will enable him to gain a settlement, 504.

ALL-DEEDS CLAUSE:
how to be abstracted, 254.
practical observations respecting, ii., 192, 193.

ALL-ESTATE CLAUSE:
how to be set out in abstract, 254.
impropriety of inserting where the assurance is not intended to pass the whole of the grantor's interest, 297; ii., 213.

ALLOTMENTS:
under inclosure acts will require double abstract, when, 246.
recent enactments respecting, 247.

ALTERATION:
in documents should be noticed in abstract, 64.
in a will, ineffectual, unless it be executed in the same manner as an original will, 347.
in instrument after execution will avoid it, when, ii., 236, 303.
will render fresh stamps necessary, when, ii., 300, 303.

ANALYSIS:
of abstract, suggestions as to the propriety of making, 275, 276.

ANCESTOR:
lineal may now be heir to his issue, 449.
(see *Shelley's case.*)

ANCIENT DEMESNE:
nature and origin of, ii., 61.
practical observations upon the tenure by, ii., 61, 62.
effect of Fine and Recovery Substitution Act upon lands holden by, ii., 62.

ANCIENT WRITINGS:
how far evidence of custom, ii., 8.
possession long continued generally treated as satisfactory evidence of, ii., 227.

ANNUITIES:
a fatal objection to a title, 17; ii., 70, 72.
clause stipulating that property is sold subject to, 17, 18.
when a devisee of lands chargeable with, may sell without the concurrence of the annuitants, 18.
contracts entered into by infants for the purchase of, void, 164.
last receipt evidence of payment of, when, 277.
are incumbrances which form matter of title, and not of conveyance, ii., 70, 72.
should be searched for, when, ii., 139.
conveyance of property charged with, the annuitant concurring, No. XL., p. cx.

ANNUITIES—*continued.*
re-grant of, charged upon real estate which had been extinguished by grant of part of the lands out of which it issued, No. XLI., p. cxiv.
conveyance of property charged with, the vendor undertaking to convey another estate by way of indemnity, No. XLII., p. cxvii.
conveyance to trustees for the purpose of indemnifying purchaser against, No. XLIII., p. cxxx.
conveyance in consideration of, No. XLV., p. cxxx.
declaration of trusts of term to secure, No. XLV., clause 13, p. cxxxv.

ANNULLING SALE:
clause for, in case vendor has a lesser interest than he pretends to sell, 22.
practical instructions for penning clause for, 22, 106, 107.
form of proviso for, by vendor, 41, 114, 121.
ditto by purchaser, 120, 122.
purchaser has the power of, when vendor cannot make a title, ii., 70, 236.
or is unable to discharge incumbrances, ii., 70, 168.
practical observations respecting, 235.
usual grounds for, on the part of vendor, ii., 237, 337, 244.
usual grounds for purchaser so doing, ii., 237—244.
how right of, may be lost, ii., 244, 245.

ANSWER:
whether by defendant, confessing a parol agreement will be binding ii., 81, 82.

APPOINTMENT:
conveyance by, defeated judgments under the old law, ii., 109.
will now, so far as affects purchasers without notice, ii., 109, 110.
practical observations upon conveyances by way of, 160.
exercise of, would defeat wife's right of dower when, ii., 198.
form of conveyance by way of, No. II., p. v.
form of recital of mortgage by way of, No. XLV., clause 3, p. cxxxi.

APPOINTMENT AND RELEASE:
form of conveyance by way of No. I., pp. i.—iv.

ARBITRATION:
forms of clauses that matters in dispute shall be settled by, 22, 38.

ASSENT:
of executor necessary to vest a term in devisee, 554.
what will amount to, 555.
to bequest to tenant for life will enure for benefit of those in remainder, 555.
of one of several executors will be the same as if all consent, 556.
may be given before probate, 556.
if once given, incapable of being retracted, 556.

ASSIGNEE:
bound by covenants running with the land, 522.

ASSIGNEE—*continued.*
mortgagee of leaseholds when so considered, 522.
not responsible for breach of covenant incurred previous to assignment, 254.
nor for breach incurred after her, has assigned the premises, 254.
cannot by assigning his interest, defeat an action incurred by a breach in his time, 524.
collateral covenants not binding on, 523.

ASSIGNEES OF BANKRUPTS:
property of bankrupt vests in, by virtue of their appointment, 196.
practical remarks with respect to sales by, 196, 235.
bound to produce a good title in the same manner as ordinary vendors, 197.
disabled from purchasing bankrupt's estate, 235.
bound to elect, whether they will accept or renounce the lease of their bankrupt, 528, 530.
need now be admitted to the bankrupt's copyhold estates, ii., 26.
form of conveyance by, to a purchaser, No. XVIII., p. l.
covenant from, that they have not incumbered, No. XVIII. clause 10, p. liii.
conveyances by, liable to stamp duties, ii., 304.
but not agreements entered into with purchasers, ii., 304.

ASSIGNEES OF INSOLVENTS:
disabled from purchasing the estate of the insolvent, 235.
doubtful whether it is necessary for them to be admitted to the insolvent's copyhold estates, ii., 26.
conveyances by, liable to stamp duties, ii., 304.
but not agreements entered into with purchasers, ii., 304.

ASSIGNMENT:
by operation of law, no breach of covenant against, 528.
might formerly have been made by mere, not in writing, 541.
alterations in the laws respecting, effected by recent enactments, 541.
note in writing, how far still supported as an agreement in equity, 542.
of parol lease, whether valid, 542.
what are the proper operative words in a deed of, 542.
description of parcels contained in, should correspond with those contained in lease, 542.
how *habendum* should be penned in deed of, 543.
instrument may operate as, although purporting to be a lease, when, 543.
distinction between, and an under lease, 543.
essential to the validity of, that it should pass an immediate interest, 544.
reservation of any portion of the term, however short, will operate as an under lease, 544.
usual covenants in, 544.

ASSUMPSIT:
for purchase-money will lie by vendor, when, 247—251.

ASSUMPSIT—*continued.*
requisites to support, 247—250.
evidence, 249.
defence, 250.
when vendor will be restricted from bringing, 251, 252.
special action of, may be maintained by purchaser, 253—257.
requisites to support, 254, 255.
may be maintained by personal representatives, when, 255.
damages in, 255, 256.

ATTAINDER:
of treason or felony renders the convict incapable of holding lands, 206, 231.
will deprive him of all power of disposition over the property, 206, 207.
as to disposition made subsequently to the commission of the crime, and previously to conviction, 206, 207.
descents, how affected by, 207.
effect of, upon the descent of estates tail, 207.

ATTENDANT TERMS:
should be set out in abstract, 258.
title of, should be investigated, costs relating to getting in must have been borne by vendor, ii., 233.
title of, should be investigated, 558.
how far a protection to purchasers, 559.
operation of recent enactments upon, 562.
formerly a protection against judgments, ii., 109.
also crown debts unless by specialty, but unless assigned would have afforded no protection against dower, ii., 111, 112.
all satisfied terms will now cease, ii., 112.

ATTESTATION:
clause of, how to be set out in abstract, 257, 258.
see DEEDS, WILLS.

ATTESTED COPIES:
in the absence of stipulation to the contrary, vendor is bound to supply at his own expense, when, 6; ii., 229.
practical suggestions respecting, 6, 32.
form of clauses stipulating that vendor will be at the expense of furnishing, 34, 124, 141, 142, 147.
mere waste paper in ejectment, ii., 229.

ATTORNEY: (see SOLICITOR.)

ATTORNEY (POWER OF):
should be abstracted, when a deed is executed under, 258.
copyholds may be surrendered by, ii., 17.
purchaser cannot be compelled to accept surrender by, ii., 17.
infant, or a *feme covert*, may act in pursuance of, when, ii., 17.
person appointing, must be under no legal disability, ii., 17.
must be made by deed, ii., 17.

ATTORNEY (POWER OF)—*continued.*
surrender of copyholds may be made by, notwithstanding principal be present, ii., 17.
lord cannot be compelled to admit under, ii., 17.

AUCTION:
if postponed after being advertised, public notice should be given, 325.
mode of conducting sales by, 2, 50—52.

AUCTION DUTY:
observations upon, 57, 59.

AUCTIONEER:
name of, should be stated in advertisements of sale, 9.
also in conditions, 11.
cannot generally maintain an action in his own name, 50.
duties of, in conducting a sale, 50, 54.
how far agent both for vendor and purchaser, 51.
liabilites of, with respect to deposit, 52.
may protect himself under Interpleader Act, when, 53.
should be cautious of selling without proper authority, 53.
should take care to name his principal, 54.
losses incurred in consequence of insolvency of, must be borne by vendor, 55.
if guilty of negligence, will be entitled to no remuneration for his services, when, 56.
lien of, upon deposit, or goods of his employer, 57.
cannot purchase the estates he is employed to sell, 235.
liable to an action for deposit, when, ii., 257.

AUTHORITY:
to sell does not pass any estate to the parties authorized, 325.
whether if given to several, it will survive, 331.

AUTRE DROIT:
estates taken in, will not cause a merger, 408.

BANKER:
with whom title deeds are deposited as a security, is now deemed purchaser within stat. 27 Eliz. c. 4; 227.

BANKRUPT:
formerly deprived of all power of disposition, 195.
afterwards, sale by, not to be impeached after five years, 195.
since reduced to two, 195.
all conveyances by, now rendered valid, when, 195.
property of, how vested in his assignees, 196.
estates tail of, how formerly barred, 198.
effect of Fine and Recovery Substitution Act upon, 190.
acts of, how void as against commissioners, 200.
dispositions of his estate by commissioners must be enrolled in Chancery, 201.

BANKRUPT—*continued.*
commission or fiat in, should always be set out in abstract, 261.
discharged from covenants when, 528
estates tail of, in copyholds how now barrable, ii., 25.
usually made a party to the conveyance of his estate, ii., 170.
in case of his refusal, order of court will have the same operation as if he had concurred, ii., 171.

BANKRUPTCY:
practical suggestions where property is sold under fiat in, 47.
stipulation that fiat or other proceeding, if required to be entered of record, to be done at vendor's expense, 47.
condition of avoiding estate upon, valid, 375.
of copyholder, defeats his wife's free-bench, ii., 4.
fatal objection to a title when, ii., 74.
purchasers, how far protected against acts of, ii., 98.
legal estate protection against, when ii., 109.
act of, or fiat in, is not, *per se*, notice to a purchaser of either of these facts, ii., 117.

BANKRUPTCY (COURT OF):
should be searched, when, ii., 131.

BARGAIN AND SALE:
term of years created by way of, will execute the possession without entry, ii., 156.
enrolment necessary to validity of, where it comprises estates of inheritance, ii., 159.
use cannot be limited to arise out of, ii., 159.
distinction between ordinary conveyances by way of, and under the Bankrupt Acts, ii., 160.
for a year always recited in release, ii., 178.
recital of, in release held sufficient in Ireland, ii., 178.
how dispensed with in practice, by statutory enactments, ii., 179.

BARON AND FEME: (see HUSBAND AND WIFE.)

BASE FEE:
only will pass when estate tail has been barred by fine, 171.
also where tenant in tail conveys without protector's consent, 172, 177.
will be enlarged, when, 178, 179.
may become absolute by confirmation, how, 179.

BEGGAR:
assignment to, will discharge previous assignee from covenants, when, 524.

BIDDER:
clause directing that highest shall be the purchaser, 29.

BIDDING:
no person to offer less than a certain price at, 29.
upon being made, auctioneer should declare the amount of, 150.
not complete till the knocking down of the hammer, 52.

BIDDING—*continued.*
right of, may be reserved to vendor, how, 60, 61.
opening of, incidental to sales under decree, 63.
practical observation respecting, 63, 66.
usual grounds for, 64, 65.
application for, how to be made, 65, 66.

BISHOPRIC:
stipulation that sale of advowson shall not be affected in consequence of next avoidance devolving upon the crown in consequence of promotion of incumbent to, 140, 141.

BISHOP'S LEASES:
vendor of, cannot be compelled to show his lessor's title, 486.

BLANKS:
in a deed, effect of filling up after execution, ii., 301.

BOND:
form stipulating that purchaser will execute, as an indemnity against incumbrances, 129.

BOROUGH ENGLISH:
custom of, and of gavelkind noticed by the laws, ii , 8.
mode of descent in, cannot be altered, ii,, 11, 12.

BOUNDARIES:
practical suggestions where freehold and copyhold lie intermixed, 38, 39.
clause to be employed under such circumstances, 39.

BUILDINGS:
when lands are sold for the purpose of, there should be some stipulation with respect to lights, 43.
money expended upon, a part performance, when, 83.

CANCELLATION:
of lease will not annul it, when, 73.
of deed does not restore the prior estates, 264.
of documents should be mentioned in abstract, 264.
of will, how far a revocation, 434.

CANCELLING:
a term inserted in the revoking clause of the Statute of Frauds, but omitted in revoking clause of recent Will Act, 434.

CANONS OF DESCENT (see DESCENTS):

CASE, ACTION UPON THE (see ACTION.)

CATALOGUE (see INVENTORY.)

CESTUI QUE TRUST:
trustee disabled to do any act to prejudice, 215.
operation of Statutes of Limitation on, 217.
barred by time from conveyance to a purchaser, 217, 218.
when trustee may convey against consent of, 218.

CHARGE:
upon property devised will pass the fee, when, 322.
when not, 322, 323.

CHARITABLE USES:
purchaser will be protected against, when, ii., 97, 98.
but not when he has notice of them, ii., 97.
must also show that he has paid an adequate consideration, ii., 98.
inadequate consideration would not affect a subsequent *bonâ fide* purchase without notice, ii., 98.

CHATTELS REAL (see TERMS OF YEARS.)

CHILDREN:
purchases in the name of an advancement for, when, 224, 226.
as to gifts to, by will, 334.
when a word of limitation, 352.
may be put to their election, when, 382.

CHURCH (see ADVOWSON.)

CLAIM:
may be filed in lieu of bill of complaint in equity, when, 271, 279.
fees payable on account of, 279.

CODICIL:
operation of, to republish a will of lands, 442.
how affected by recent enactments, 443.

COLLATERAL WARRANTY:
would have barred an entail, when, 183.

COLLECTOR OF TAXES:
of a parish not considered an accountant to the Crown, 80.

COLONIES:
conveyances of property in, made in England, must be stamped in the same manner as conveyances of property in this country, ii., 303.

COMMISSION OF BANKRUPTCY:
how to be abstracted, 261.

COMMISSIONERS OF BANKRUPTCY:
assignment by, formerly necessary to vest estate in assignees, 197.
bargain and sale by, formerly usual mode of barring bankrupt's estate tail, 198.
not now necessary, 198.
empowered to confirm voidable estates, how, 200.
effect of disposition by, 200.
all dispositions by, except of copyholds, must be enrolled, 201.
disabled from purchasing bankrupt's property, 235.

COMMISSIONERS OF INLAND REVENUE:
compelled to stamp instruments on payment of duties and penalty, ii., 305.

COMMITTEE OF LUNATIC:
may avoid acts done by lunatic, when, 157.
cannot maintain ejectment, 157.
cannot purchase lunatic's estate, 235.

COMMON, TENANTS IN:
as they take distinct estates must be severally admitted to copyholds, ii., 25.
but if the shares of several unite in one person, one admission is sufficient, 25.

COMPENSATION:
purchaser cannot be compelled to complete contract with, when the property is wilfully misdescribed 14, 16.
annuitant cannot be compelled to accept, 17, 18.
stipulation that it shall be allowed in case of deficiency in number of acres, 38, 115.

CONCEALMENT:
of defects will render party liable to action, when, 26, 27.
will entitle purchaser to rescind contract, 27.

CONDITION:
to restrain a lessee from assigning, not favoured, 188—190.
will not preclude him from underletting, 188.
if lessee assign with lessor's consent, it will be discharged, 189.
equity will not relieve against a forfeiture incurred by breach of, 189.
distinction between, and a covenant not to assign, 190.
must not be inconsistent nor repugnant to the nature and quality of the estate, 368.
what may be valid, 368.
to determine an estate must determine it *in toto*, and not in part, 368, 369.
for abridging an estate, how far good, 369.
impossible, a mere nullity, 371.
in restraint of marriage, how construed, 372.
distinction between precedent, and subsequent, 372, 375.
to avoid estate on bankruptcy or insolvency valid, 375, 376.
when an estate may be enlarged upon, 376, 377.
not to dispute will, how construed, 379.
not to assign without licence, how discharged, 527.
distinction between, and a covenant, 530, 531.
annexed to an estate, a fatal objection to a title, ii., 70.
defect may be cured by release of party entitled to benefit of, ii., 70, 71.
vendor cannot compel such release, ii., 70, 71.

CONDITIONAL FEE:
only will pass in copyholds where there is no custom to entail, ii., 39.
by the common law lands subject to become alienable on issue born, ii., 39.
power of alienation in, how restrained by the statute *de donis*, *ib.*, ii., 39.
statute does not extend to copyholds, ii., 39.

CONDITIONAL FEE—*continued.*
limitation of, in copyholds may pass by common surrender, ii., 39.
assurance of, will not be affected by subsequent failure of issue, ii., 39.
if made before issue born, may be made good by relation, if issue be afterwards born, ii., 39.

CONDITIONAL LIMITATION:
distinction between, and contingent remainders, 263, 364.
not valid at common law, 364.
but good in wills, and conveyances to uses, 364.
how far barrable, 367.
of the requisites to support, 367, 368.
how far it will be affected by the failure of the preceding estate, 370.
is an incumbrance, which is a matter of title, when, ii., 70.
when not, ii., 71.

CONDITIONS OF SALE:
preliminary observations respecting, 6, 7.
may protect vender from difficulties occasioned by defective title, when, 9.
practical directions for preparing, 10, 28.
cannot be added to, or varied by parol, 11.
how they should commence, 11.
what parties should be named in, 11.
how parcels should be set out in, 11, 12.
when, of leaseholds vendor's interest should be stated according to the fact, 13.
what covenants should be set out, 13, 14.
clause, that lots should be put up at a price named by auctioneer, 28.
that highest bidder shall be purchaser, 29, 113, 114.
that each bidder shall not offer less than a specified sum, 29.
that highest bidder shall pay auctioneer, 29.
as to payment of deposit, 29, 114.
that purchaser shall pay interest on purchase-money, 29, 30.
that vendor will deliver abstracts, &c., 30.
clause where vendor is apprehensive he may possibly be unable to confer a good title, 30.
clause that vendor will produce a good title, 31.
clause that the expense of conveyance of outstanding estates shall be borne by purchasers, 32.
practical observations respecting, 31, 32.
clause, that recital of facts contained in document of twenty years old, shall be sufficient evidence thereof, 34.
clause that vendor shall be at the expense of the production of muniments of title not in his possession, 34.
clause also of attested or other copies, &c., 35.
clause that vendor shall bear the expense of disentailing deeds, 36.
clause also of acknowledgments of married women, 36.
clause that timber shall be taken at a valuation, 36.
clause also fixtures, 36, 37.

CONDITIONS OF SALE—*continued.*
clause that number of acres as stated is supposed to be correct; but is not warranted to be so, 38.
clause that compensation shall be allowed in case of deficiency, 38.
clause that if title cannot be made as to some of the lots, contract shall be good as to residue, 38.
that vendor shall be allowed to retain title deeds, 39.
that conveyance shall be prepared by purchaser's solicitor, 41.
that vendor's solicitor shall prepare conveyance, 41.
that if purchaser shall fail to comply with conditions, vendor may rescind contract, 41.
forms of contracts to be annexed to, 42, 43.
clause where purchaser is not to call for lessor's title, 45.
that lease is subject to certain rents and covenants, 46.
that purchasers shall indemnify each other against rents contained in original lease, 46.
that purchaser shall be let into possession on undertaking to pay interest, 47.
should be read over previous to sale, 50.

CONFESSION:
of agreement will take it out of the Statute of Frauds, when, 81.

CONSIDERATION:
nature of, should be stated in abstract, 258.
how to be set out in, 258.
necessary to raise a use, 258; ii., 180.
of conveyance should be stated in testatum ii., 179.
none necessary to the validity of a deed at common law, ii., 179.
is now expressed in body of conveyance, and also endorsed thereon, ii., 180.
at law acknowledgment of conclusive, *aliter* in equity, 180.
how it should be expressed in a deed, 180, 181.
whether failure of, will afford sufficient ground for rescinding contract, 479; ii., 242.
no *ad valorem* duty payable upon a mere nominal, ii., 290.
full amount of, must be expressed on the face of the instrument, ii., 290, 291.
penalties for omitting to set out truly, ii., 291, 292.
inadequacy of, not generally considered a sufficient ground for rescinding contract, ii., 243.

CONSTRUCTIVE NOTICE (see NOTICE.)

CONTINGENT INTERESTS:
how agreements for the sale of, should be framed, 103.

CONTINGENT REMAINDERS:
agreement for the purchase of, 143.
defined and distinguished, 363, 371.
difference between, and conditional limitations, 365.
distinction between, and an executory devise, 365.

CONTINGENT REMAINDERS—*continued.*
how they might have been destroyed, 365, 366.
recent enactments respecting, 366.

CONTRACT (see AGREEMENT.)

CONTRACTING PARTIES:
capacity of, 149, 236.
as to vendor, 149, 228.
as to purchaser, 229, 236.
with few exceptions all persons are capable of being, 150.

CONTRIBUTION:
towards renewal of leases, 536.

CONVENTIONARY TENANTS (see CORNWALL, DUCHY LANDS OF.)

CONVEYANCE:
it should be stipulated at whose expense it is to be prepared, 39.
if not, must be borne by purchaser, 40; ii., 234.
purchaser's solicitor is entitled to prepare it where there is no stipulation to the contrary, 40; ii., 154.
if prepared by vendor's solicitor, it will constitute him an agent for purchaser, 40.
practical remarks respecting, 40.
clause directing it shall be prepared by purchaser's solicitor, 41.
clause where vendor's solicitor is to prepare. 41.
stipulation that it shall be prepared by purchaser's solicitor, 41, 120, 137.
what will be considered as matters of, and what of title, 274.
of devised property will revoke prior will, when, 397, 403.
how affected by recent enactments, 403, 404.
practical directions for preparing, ii., 165, 227.
purchaser may select mode of, ii., 154.
in ancient times feoffment, most usual form of, ii., 154.
was rarely used after the introduction of assurances by way of lease and release, ii., 155.
release at common law, another mode of, ii., 155.
assurances by lease and release, ii., 156.
by release under recent enactments, ii., 156, 157.
operation of recent enactments upon, ii., 157, 159.
by bargain and sale, ii., 158.
by appointment, ii., 160.
by exchange, ii., 161.
by disentailing deeds, ii., 163, 164.
should commence with the date, ii., 165.
wrong or impossible, date will not invalidate, ii., 165.
takes effect from time of delivery, and not of date, ii , 165, 166.
how parties to should be described in, 167.
order in which they should stand in, ii., 168.
who are the necessary parties to, ii., 168, 172.
recitals in (see RECITALS.)

CONVEYANCE—*continued.*
as to the stamps to be attached to (see STAMP DUTIES.)
consideration in (see CONSIDERATION.)

COPARCENERS (see PARCENERS.)

COPY OF COURT ROLL (see COPYHOLDS.)

COPYHOLDER:
may transfer his estate to a purchaser, 191.
but cannot, without the lord's licence, lease for more than a year, 191; ii., 6.
but to incur a forfeiture a common law interest must pass, 191.
any conveyance sufficient to pass a common law interest, except a bargain and sale, will cause a forfeiture, 192.
equity will relieve against forfeitures inadvertently incurred by, 193.
but rarely if wilfully incurred, 193.
power of tenant in tail to bar the entail, 193, 194.
in the eye of the law considered as a tenant at will, ii., 2, 3.
how capable of passing his estate, ii., 3.
widow of, not dowable except by custom, ii., 3.
prior to admission, takes merely a nominee, ii., 21.
cannot forfeit his estate until admittance, ii., 21.
incapable of surrendering until admittance, ii., 21.
but may assign his equitable interest, ii., 21.

COPYHOLDS:
should be stated in contracts or conditions by whom the expense of surrenders and admittances is to be borne, 35.
otherwise must be borne by purchaser, 35.
also the fine, 35.
form of agreement for the purchase of, 133.
tenant of, may transfer his estate, 190.
cannot be ejected by the lord so long as he observes the custom, 190.
but cannot generally lease without licence, 191.
to effect a forfeiture a common law interest must pass, 191.
estates tail in, how barred, 193; ii., 40, 44—47.
additional abstract will be required of, when, 247.
as to minerals arising out of, 248.
how to be abstracted, 269, 270.
not within the Statute of Uses, 284.
pass by surrender and admission, ii., 3.
how descendible, ii., 3.
lord cannot refuse to regrant, ii., 3.
doubtful how far they can be entailed, ii., 3.
not within statute *de donis*, ii., 3.
how affected by judgments, ii., 5.
not formerly liable to simple contract debts, ii., 6.
or to debts by specialty, ii., 6.
might have been taken under a sequestration in equity, ii., 6.
now liable to judgments, ii., 6.
cannot be created at the present day, ii., 9.

COPYHOLDS—*continued.*
but lord, with consent of homage, may make new grants of waste lands, ii., 9, 10.
or regrant, when the lands escheat to him, ii., 10.
but regrant must be made in pursuance of the customs of the manor, not requisite that estate of lord should be commensurate with copyholder's interest, ii., 10.
not subject to incumbrances of the lord, ii., 10.
customs as to descents of, ii., 13.
in the absence of any transmissible, in the same course as freeholds, ii., 11.
may by custom be transmissible differently, ii., 11.
such custom will be strictly construed, ii., 12.
rule in *Shelley's case* applicable to, ii., 13.
alienation of, how effected, ii., 14.
cannot be exchanged by an ordinary deed of exchange at common law, ii., 14.
legal estates in, can only pass by admission and surrender, ii., 14.
equitable estate in, may pass without either admission or surrender, ii., 14.
power relating to, may be exercised without surrender, when, ii., 14, 15.
lord may be compelled to admit tenant to, ii., 15.
by subpœna in equity, ii., 15.
by *mandamus* at law, ii., 15.
effect of surrender of (see SURRENDER OF COPYHOLDS.)
presentment of surrender of, how, and when to be made, ii., 18, 20.
practical remarks of admission to (see ADMISSION TO COPYHOLDS.)
devisee of, no estate until admittance, ii., 22.
fines on admission to (see FINES.)
declaration of the uses of, ii., 29—36.
party to whose use surrender is made should be precisely mentioned, ii., 29.
when uncertainty in description may be helped, ii., 30.
mistake in name of occupant, or of number of acres will not vitiate surrender of, ii., 30.
construction of limitations, ii., 30.
by what rules governed, ii., 31.
not within statute of uses, ii., 32.
as to contingent remainders in, ii., 33.
estates in cannot be limited to commence *in futuro*, ii., 33.
doubted whether a fee upon a fee can be limited in, ii., 33.
who will be entitled when no use is declared, ii., 35.
resulting trusts of, how construed, ii., 35, 36.
tenant right of reservation, ii., 37, 38.
custom of, how supported, ii., 38.
of conditional fees in, ii., 39.
estates tail in, ii., 40—48.
how estates tail in were formerly barred, ii., 40.
where the custom prescribed no particular form, entail might have been barred by surrender, ii., 41.

COPYHOLDS—*continued.*
other modes of barring entails in, ii., 41.
as to equitable estates, ii., 41.
operation of Fine and Recovery Substitution Act upon, ii., 44.
as to the consent of protector, ii., 44, 45.
as to equitable estate, ii., 45.
estates tail of bankrupts in, how barred, ii., 45—47.
as the wills of, 48—60.
not rendered devisable by Statute of Wills, ii., 48.
excluded from devising operation of the Statute of Frauds, ii., 48.
devisable by custom; might, when authorized by custom, have been devised by an unattested will, ii., 48, 49.
where surrender to, will required any particular form, it must have been complied with, ii., 49.
in the absence of custom to surrender to will, it must have been attested by three witnesses, ii., 50.
operation to use of will of, ii., 50.
when equity would have supplied want of surrender, ii., 53, 56.
statutory enactments dispensing with necessity of surrender, ii., 56, 59.
distinction between, and customary freeholds, ii., 59.
how distinguishable from lands in ancient demesne, ii., 60.
doubtful whether liable to crown debts, ii., 80.
not formerly liable to judgments, ii., 81.
deed of covenant to surrender to purchaser in fee, with usual covenants for title, No. XXXIII., p. lxxxvii.
form of deed to accompany surrender of, No. XXXIV., p. xci.
covenant to surrender an estate determinable on lives, No. XXXIV., p. xcii.
assurance of, to a purchaser accompanied by conveyance of freehold and assignment of leasehold property, No. XXXV., p. xciv.
conveyance of by mortgagor and mortgagee to a purchaser in fee, No. XXXIX., p. civ.
as to stamp duties chargeable in respect of, ii., 304.

CORNWALL (DUCHY LANDS OF):
holden of assessionable manors, ii., 63.
estates in, styled conventionary tenements, ii, 64.
how formerly holden, ii., 64.
were held under grants renewed every seven years; now made of freehold tenure, ii., 64.
as to reservations of minerals in, ii., 66, 67.
claims of duchy respecting, how barred by Statute of Limitations, ii., 67, 68.

CORPORATIONS:
ecclesiastical formerly restrained from alienation beyond granting leases, 201.
exceptions with respect to incumbents, 201, 202.
powers of lay corporations to alienate, 202.
how restricted by statutory enactments, 202—206.
as to leases granted by, 203—206.

CORPORATIONS—*continued.*
disabled from holding lands without licence from the crown, 232.
alterations effected by recent enactments, 202—205, 232.
incapable to be seised to a use, 283.

CORPOREAL HEREDITAMENTS:
now made to lie in grant, ii., 156.

COSTS:
vendor must bear, of deducing title, and purchaser of conveyance, ii., 228.
amount of vendor's will depend upon state of his title, ii., 228.
of preparing and delivering abstract must be borne by vendor, ii., 229.
also covenants for production of title deeds, when necessary, ii., 229.
also of production, when not in his possession. ii. 231.
vendor must defray, of getting in all outstanding estates, ii. 232.
also of barring entails, ii., 232.
also of getting in estates outstanding in infants or lunatics, ii., 233.
of procuring concurrence of necessary parties to conveyances must be borne by vendor, ii., 233.
also of petitions to the Court of Chancery, order and directions, ii.. 233.
but purchaser must be at other costs of the conveyance, ii., 233.
in equity are always discretionary, ii., 269.
generally speaking they will fall upon the losing party, ii., 269.
if vendor's bill be dismissed because he cannot make a title, he will generally have to pay the whole costs of the suit, ii., 269.
but if purchaser sets up matter of special defence, which he fails in proving, he will have to pay the costs of the defence, ii., 269.
but not for taking a reasonable objection to the title, ii., 269, 270.
when equity will not give costs, ii., 270.

COUNSEL:
abstract should always be submitted to, 272.
notice to, is notice to the party who employs him, ii.. 119.

COUNSEL'S OPINION:
upon the title, vendor will be entitled to, in case contract be rescinded, notwithstanding purchaser paid for it, ii., 129.

COURTS OF RECORD:
what are so considered, ii., 230.

COUNTERPART:
of instruments how to be stamped, ii., 299, 300.

COURT ROLLS:
stipulations that purchaser shall pay the costs of examining, 134.
copy of should be set out in abstract, 269.
entry on, the best evidence of custom, ii., 8.
entry on, best evidence of surrender, ii., 21.
but not the only, or conclusive evidence, ii., 21.
presentments of surrender should be duly made and entered on, ii., 19.

COURT ROLLS—*continued.*
should be inspected to ascertain that no documents have been left out in the abstract, 139.

COURTS OF EQUITY:
will not generally decree the specific performance of a parol contract, 81.
exceptions to this rule, 81—87.
will relieve where a power of leasing has been badly executed, 491, 497.
but not if any fraud has been attempted against a remainder-man, 497, 498.
will compel lord to admit copyholders, ii., 3.
will also relieve a purchaser when informally admitted, ii., 28, 29.
will relieve against the omission of livery of seisin, ii., 106.
also against a defective execution of a power, ii., 106.
but not against a non-execution, ii., 106.
also against dormant incumbrances, 108.
will debar mortgagor of his right of redemption, when, ii., 108.
legal estate will entitle the purchaser to equitable relief and protection, when, 108, 112.
requisites to entitle a party to the protection of, ii., 108—110.

COVENANTS:
what, in a lease are construed as common and usual, 14.
clause stipulating that purchaser shall indemnify vendor against, 46.
no objection to title that the usual, have been omitted in former conveyances, 409.
when, inserted, it will be proper to see that they have been entered into by the necessary parties, 409, 410.
will not run with the land when entered into by parties between whom there is no privity of estate, 410.
for title, practical observations upon, 410, 411.
what, are considered as synonymous, 411, 412.
for seisin in fee, and right to convey, 411.
for quiet enjoyment, 412, 413.
whether it can be controlled by antecedent qualified, 413.
freedom from incumbrances, 414, 415.
for further assurance, 415.
are either express, or implied, 417.
distinction between, 417, 519.
may be restrained by express, 518.
express, taken more strictly against the party than implied, 519.
when, entered into for keeping in repair, lessee must rebuild in case they are burnt down or destroyed, 520.
if to pay rent, he must do so under the like circumstances, 520.
equity would formerly relieve against, 520.
but no such rule now exists, 520.
when express, lessee will remain liable notwithstanding he may have assigned the property, 520, 521.

COVENANTS—*continued.*
acceptance of rent by lessor from assignee will not destroy lessee's liability, 521.
action for breach of, not maintainable by original lessee against an under lessee, 521
binding on the personal representative, when, 521, 522.
running with the land binding on the assignee although not named, 522.
of a personal nature, determines with the death of the party entering into, 522.
mortgagee of term of years bound by, when, 523.
collateral covenants not binding on the assignee although he be named, 523.
nor for breach of, incurred previous to their time, 524.
nor after he has assigned over his interest, 521, 524.
but cannot by assignment defeat a right of action for breach incurred during his time, 524.
what kinds of, will run with the land, 525.
not to assign without licence, does not run with, 526.
is not construed to mean a common and usual covenant, 526, 527.
granting an underlease no breach of, when, 527.
when otherwise, 527.
assignment by operation of law no breach of, 528.
bankrupt when discharged from, in leases, 528.
distinction between, and conditions or provisoes not to assign, 530, 531.
acceptance of rent after notice, waiver of forfeiture for breach of, 531.
for renewal of leases, how construed, 532.
vendor can only be required to enter into qualified, ii., 202.
when vendor claims by descent or under a will he must covenant for his ancestors and testators, ii., 202, 203.
sometimes vendor enters into general covenants, ii., 203.
practical remarks upon the usual covenants contained in purchase deeds, ii., 204—210.
to produce title deeds required when vendor retains them, ii., 207.
married women incapable of entering into, ii., 208.
by trustees, ii., 208, 209.
mortgagees, ii., 208, 209.
heirs-at-law, ii., 208, 209.
executors and administrators, ii., 208, 209.
of indemnity, vendor entitled to, when, ii., 209.
with whom to be entered into, ii., 209.
forms of, usual for title, No. I., clauses 9, 10, 11, pp. iii., iv.; No. II., clauses 4 to 7 inclusive, pp. vi., vii.; No. III., clauses 5, 6, 7, pp. viii., ix.

COVENANTS TO PRODUCE TITLE-DEEDS:
Costs of, must be borne by vendor, when, ii., 229.

COVERTURE:
woman disabled from entering into contracts during, 164.

COVERTURE—*continued.*
what acts done by her during, are valid, 165, 169, 170, 174, 175, 230, 505; ii. 17.

CREDITORS:
voluntary, conveyance not good against, when, 223, 227, 228.
may file claim instead of bill of complaint when, ii. 271.

CROPS (see GROWING CROPS.)

CROSS REMAINDERS:
will be implied, when, 355, 357.

CROWN DEBTS:
matter of conveyance, and not of title, ii. 70, 78, 80.
formerly the crown had a lien in debtor's lands even after alienation, ii. 78, 79.
law respecting, how altered by recent enactments, 79, 80.
trust estates liable to, ii., 80.
lien for, extends only to immediate accountants, ii., 80.
will not affect purchasers unless duly registered, ii., 102.
search must be made for, when, ii., 137.
formerly a lien on real estates of receivers, although contracted after alienation, ii., 78.
alterations in the law respecting, affected by recent enactments, ii , 79.
lien for, extends only to immediate receivers, ii., 80.

CURTESY:
estate in, a fatal defect in a title, ii., 70, 72.
tenant by (see TENANT BY CURTESY.)

CUSTOM:
of manor should be mentioned in abstract, 209.
important in copyhold titles, ii., 7.
in order to be good must have existed time out of memory, ii., 7, 9, 11.
must be reasonable, ii., 7.
it must be certain, 7.
compulsory, ii., 7.
not inconsistent with another custom, ii., 7.
if bad in part void for the whole, ii., 7.
what will be sufficient proof of, ii., 8, 9.
proof of, except of lands in gavelkind and borough English rests with him who alleges it, ii., 8.
in copyholds best evidence of, is the court-rolls, ii., 8.
one undisturbed act will not create, ii., 8.
if doubtful question may be decided by a jury, ii., 8.
by consent, Court of Equity will order a reference respecting, to the Master, ii., 9.
of one manor, no evidence to explain that of another, ii., 9.
ancient writings, how far evidence, ii., 9.
lord cannot exceed limits prescribed by, ii., 10.
to grant for life, will not authorize a grant to a woman during a widowhood, ii., 10.

CUSTOM—*continued.*
will guide the course of descent, ii., 11.
where it prescribes a course different from the common law, will be construed strictly, ii., 12.

CUSTOMARY FREEHOLDS:
how distinguished from copyholds, ii. 59, 60.
except when varied by custom, are subject to the general law of copyholds, ii., 59.
sometimes pass by deed and admittance without surrender, ii., 59.
so far partake of a freehold nature as to fall within the Statute of Frauds, ii., 59, 60.

CUSTOMARY LANDS OF THE DUCHY OF CORNWALL (see CORNWALL, DUCHY LANDS OF.)

CY. PRES. DOCTRINE:
what, 347.
only allowed in wills, 347.
and only applicable to real estate, 347.

DAMAGE:
stipulation that intermediate, between contract and conveyance, shall not affect the sale, 131.

DAMAGES LIQUIDATED (see LIQUIDATED DAMAGES.)
vendor may bring actions for, in case purchaser refuses to fulfil the contract, ii., 236.
what amount of may be recovered by purchaser, ii. 255.
to recover special, for investigating title, plaintiff may lay them as such, ii., 255.
cannot recover them under a count for money paid, ii., 255, 256.
cannot recover any for costs incurred previous to entering into contract, ii., 256.
nor for fancied goodness of the bargain, ii., 256.

DATE:
conveyance should commence with, ii., 165.
want of, will not invalidate assurance, ii., 155, 166.
nor an impossible one, ii., 165.
as where there is a mistake by giving priority to wrong instrument, ii., 165, 166.

DEATHS:
vendor bound to supply evidence of, at his own costs, 32.
clause directing that recital shall be sufficient evidence of, 32.
it may be stipulated that these costs are to be defrayed by purchaser, 31, 32.
certificate of, evidence of the fact, 277.

DEBTS:
effect of charge of, upon real property, 18.
where lands are devised charged with, devisor may sell to pay them off, 28.

DEBTS—*continued.*
unless specified, or scheduled, purchaser of property charged with, is exonerated from seeing to application of purchase money, 18; ii., 84.
otherwise, if specified, or scheduled, 18; ii., 84.
devise of lands charged with, will pass the fee, 323.
charged on real estate incumbrances, ii., 84.
purchaser not bound to see them discharged in the case of a sale of leasehold property, ii., 84.
distinction between charges for payment of, and of legacies, ii., 85.
of ancestor or testator not binding on purchaser from heir or devisee, when, ii., 86.

DECEIT:
action for, will lie where property is wilfully misrepresented, 27.
requisites to sustain, 27.
also where vendor fraudulently conceals an encumbrance, ii., 136.

DECLARATION:
clause directing that it shall be sufficient evidence of identity of premises given by vendors, ii., 132.
substituted for oaths to prove identity of parcels, ii., 127, 128.

DECREES:
sales under (see SALES BEFORE THE MASTER.)
must be set out in abstract, how, 263.
will have the same operation on land as judgments, 263; ii. 83.
registration of, not of itself notice of, ii., 117.

DEED POLL:
form of covenant for the production of, No. XVI., clause 6, p. xlvi.
form of schedule of, No. XVI., p. xlvii.
form of deed of covenant to produce, No. XVII., p. xlviii.

DEEDS:
it is a common stipulation that purchaser shall be at the expense of comparing, with abstract, 34.
expense of production must be borne by vendor, ii. 229, 231.
as to copies of, 6, 31, 32.
there should be stipulation as to the custody of, when, 34.
form of clause when vendor is to retain them, 34.
clause that vendor shall retain, 34, 46, 124, 132.
suggestions as to stipulations respecting the possession of, 34, 46.
clause directing that purchaser shall be at the expense of comparing with abstract, 119, 120.
that they shall be delivered over to purchaser who shall covenant to produce them, 124.
of the exposition of, 303.
a less liberal construction allowed in the construction of, than in wills, 303.
only the act of parties actually executing, 417.
possession of, unaccompanied with other circumstances sufficient to affect purchaser with notice, ii., 115.

DEEDS—*continued.*
ought to be compared with abstract before the latter is submitted to counsel, ii., 122.
how should be compared with abstract, ii., 123.
expenses of production must be borne by vendors, when, 124, 125.
purchaser's solicitor must ascertain that they have been duly executed, ii., 124.
also that receipt for purchase money is duly indorsed, ii., 124.
if enrolment of, be necessary, it must be ascertained that this has been done, ii., 124.
also when registration is required, ii., 124.
also that the proper stamps are affixed to them, ii., 124.
loss of, will not afford ground for rescinding contract, if vendor can procure copies, when, ii., 126.
when accidentally destroyed, parties to, may be made to concur in subsequent conveyances, when, ii., 126.
in the case of loss of, assignments in leasehold may be made good in the recitals, ii., 126.
title may be good, although there are none, ii., 129.
how parties to, should be described, ii., 168—172.
order in which they should be placed, ii., 168.
grant of, not necessary, unless vendor retains part of the lands to which they relate, ii., 192.
when retained by vendor, he usually enters into covenant for their production, ii., 193.
unless otherwise stipulated for, bound to furnish purchaser with attested copies, ii., 193.
if lost or destroyed, purchaser will not be entitled to rescind contract if vendor can deliver copies that would be evidence at law, and prove their execution, ii., 126.
if destroyed by accident, parties to. may be compelled to join in subsequent conveyance, when, ii., 126.
mortgagor cannot compel mortgagee to produce, ii., 143.
as to the execution and attestation of, ii., 230.
practical observations, as to covenants for the production of, ii., 230.
how far alteration in, after execution will affect the stamps, ii., 300.
made between several parties may operate at different times, ii., 300.
effect of filling up blanks in, after execution, ii., 301.
re-execution of, will not give it validity when void for the want of proper formalities, when, 302.
all made within the United Kingdom, although relating to property abroad, must be stamped, 302.

DEFAULT.
proviso that mortgagor shall enjoy until, No. VII., clause 8, p. xxiv.

DEFECTIVE ASSURANCES:
equity will protect against, when, ii., 102, 103, 106, 107.
vendor how far bound to perfect, 107.
heir cannot be compelled to perfect, 107.

DEFECTIVE ASSURANCES—*continued.*
properly stamped, confirmed by subsequent deed, renders no fresh *ad valorem* duty payable, ii., 295.
DEFECTIVE TITLE:
how vendor may best protect himself against, 21, 22, 39.
DEFECTS:
how vendor may protect himself in case of, 33.
no unfair attempts should be made to conceal, 26.
fraudulent concealment of, will vitiate sale, 26, 27.
and also render party liable to an action, 27.
DEPOSIT:
clause relating to payment of, 29, 114.
clause declaring that it shall be forfeited to vendor in case purchaser fails to fulfil his contract, 41.
auctioneer considered as stakeholder of, when, 52.
liabilities of respecting, 52, 53.
may be rendered liable for, when, 53, 54.
infant cannot recover back upon rescinding contract, unless fraud has been practised upon him, 163.
to entitle plaintiff to recover, he must prove that he paid it, 256.
as to proceedings against auctioneer for recovery of, ii., 257.
DERIVATIVE ESTATES:
not destroyed or forfeited by the merger of the original estates, when, 475.
aliter where the original estate expires by effusion of time, 475.
of a collateral determination, 475, 476.
DESCENTS:
costs of producing evidence of, must be borne by vendor, 32.
clause directing that recitals shall bedeemed sufficient evidence of, 32.
whether it can be traced through an attainted person, 206, 207, 450, 460.
how to be abstracted, 263, 264.
old law respecting, 447—452.
how the lineal inheritance formerly descended, 448.
important alterations in the law of, effected by recent enactments, 453—462.
half-blood excluded from taking by, when may now inherit, 455.
heir of testator would formerly have taken by, instead of by devise, 456.
alterations in the law in this respect, 456, 457.
would formerly have tolled an entry, 459.
heir now deprived of this advantage by more recent enactments, 459.
could not formerly have been traced through an attainted person, 450.
law now altered in this respect, how, 460, 461, 462.
in copyholds (see COPYHOLDS.)
DESTRUCTION OF PROPERTY:
between contract and conveyance, no ground for rescinding contract, 479.
loss incurred by, must be borne by purchaser, 479.

DEVISE (see WILL.)

DEVISEE:
of copyholds, no estate until admittance, ii., 22.
rule equally applicable to equitable as to legal estates, ii., 22.
could not formerly have devised, ii., 23.
now empowered to do so by stat. 1 Vict. c. 26, ii., 23.
would have barred an estate tail, when, 183.
recent enactments respecting, 184.
will not now bar a right of entry, 184.

DISABILITIES:
legal, will prevent the operation of the Statute of Limitations, when, 210.
imprisonment formerly so considered, 210.
not included in recent Statute of Limitations, 210.
absconding to avoid justice not a disability within protection of statute, 211.

DISCLAIMER:
a forfeiture of the tenant's estates, ii., 475.

DISCONTINUANCE:
tenant in tail might have barred the entail by, when, 183.
effect of, destroyed by recent statutes, 3 & 4 Will. 4, c. 27, and 8 & 9 Vict. c. 106, ii., 184.

DISENTAILING DEEDS:
it should be stated in conditions who is to be at the expense of, 4.
vendor otherwise liable to, 31, 32.
clause directing that vendor shall be at the expense of, 36, 114, 119, 147.
substituted for fines and recoveries, 171.
form of, by tenant in tail, with consent of protector, for the purpose of barring an entail prior to a conveyance, No. XXII., p. lxiii.
consent of protector when given by a distinct assurance, No. XXIII., p. lxiv.
form of, by father, tenant for life, and his son tenant in tail in remainder to a purchaser to uses to bar dower, No. XXIV., p. lxvi.
ditto by heir in tail without consent of protector, with covenant to perfect title at a future period, No. XXV., p. lxix.
further assurance in pursuance of the covenant contained in last precedent, No. XXVI., p. lxxiii.
conveyance by tenant in tail in possession to a purchaser, his wife concurring to release her dower, No. XXVII., p. lxxvi.
recital of by tenant in tail and remainder man, No. XLV., clause 2. p. cxxx.
must be a perfect instrument, 177, 178.
courts of equity have no power to relieve in case of, 178.
must be enrolled within six months after execution, 178.
protector's consent when necessary to, 177, 179.
what estates and interests will pass under, 179.
analogy between, and fines and recoveries, 179, 180.

DISENTAILING DEEDS—*continued.*
practical observations respecting, 181.
as to copyholds, 194.
must be ascertained that they have been duly enrolled, ii., 136.
also that time of enrolment has not expired, ii., 136.
practical observations respecting the preparation of, ii., 162, 163.

DISTRESS:
form of powers of, No. XLIII., clause 6, p. cxxi; No. XLV., clause 9, p. cxxxiv.

DOCKET:
notice of, not notice of act of bankruptcy, ii., 217.

DOCUMENTS:
how to be set out in abstract, 250, 266.
cancellation, alteration, or erasure in, should be mentioned in abstract, 264.
legal operation and effect of, 279, 290 (see DEEDS, WILLS, &c.)

DONEES OF POWERS:
rights of alienation of, will depend upon the particular terms of the instrument creating the power, 221.

DORMANT CLAIMS:
though unlikely to be made may be a fatal objection to a title, 8.

DORMANT INCUMBRANCES:
fatal objection to a title, ii., 70.
equity will relieve against, when, ii., 109.

DOUBTFUL TITLE:
purchaser cannot be compelled to take, ii., 140.

DOWER:
how far husband can defeat his wife's title to, 169.
alterations effected by the new Dower Act, 169, ii. 74.
what assurances are necessary to release, 164, 169, 170.
estate in, will not constitute a protector of a settlement, 175.
tenant by, liable to impeachment of waste, 478.
estate *pur autre vie* not subject to, 481.
right to, will afford a fatal objection to title, ii., 70, 72.
how far widow might have been debarred of, ii., 73.
jointure, a good bar to, ii., 73.
husband married to, subsequently to 1833, 74.
enabled to defeat wife's title to dower, ii., 74.
purchaser even with notice of, may protect himself against by obtaining legal estate, when, ii., 110, 111.
attendant term will afford no protection against, unless actually assigned, ii., 111.
no longer a protection against, *semble*, ii., 111, 112.
how uses to bar should be penned, ii., 199.
form of limitations of, No. I., clause 6, p. iii.; No. II., clause 3, p. v.
declaration to debar widow of, No. I., clause 7, p. iii.

DOWER TRUSTEE:
not a necessary party to a conveyance, ii., 169.

DRAFT OF CONVEYANCE:
should be stipulated at whose expense it is to be prepared, 39.
purchaser's solicitor entitled to prepare, 40.
should forward fair copy of, to vendor's solicitor, ii., 153, 154.
if any alterations are made in, solicitor should show how they affect his client's interest, ii., 154.

DROPPING OF LIVES:
between advertisements and sale must be noticed in particulars of sale, 14.
fact of, unnoticed in conditions of sale, will afford a defence to an action for non-performance of agreement, 14.
pending contract will afford no ground for annulling sale, 478, 479.
or for an abatement of price, 479.

DRUNKENNESS:
equity will permit as a defence to a specific performance, when, 158.
whether it can be set up as a defence to an action at law, 159.

DUPLICATES:
of instruments how to be stamped, ii., 299, 300.

EASEMENTS:
can only pass by deed, when, 72.

EFFECTS:
in a will is more applicable to personal than to real estate, 312.
if the words real or testamentary be annexed to it, it will embrace real property, 312.

ELECTION:
doctrine of, 378, 385.
definition of, 378, 379.
what will be sufficient to raise, 379.
what persons will be bound to, 380.
what acts will amount to, 383, 384.

EMBLEMENTS:
sale of, whether within Statute of Frauds, 76, 78.
what produce will be considered as, 78.

ENFRANCHISEMENT:
agreement for, of a copyhold, 146.
of a copyholder will bar a copyhold entail, ii., 43.
form of, No. XXXI., p. lxxxvi.

ENROLMENT:
disentailing deeds require, 178.
no proof of execution of the deed is required at the time of, 178.
certificate of, no proof of execution, 178.

ENTAILS:
when deed requires, it must be ascertained that this has been done ii., 124.

ENTAILS—*continued.*
necessary to the validity of disentailing deeds, ii., 136.
must be ascertained that this has been duly done, ii., 136.
also that time for, has not expired, ii., 136.
expense of, must be borne by vendor, ii., 136.
costs of barring, must be borne by vendor, ii., 233.

ENTIRE:
when property is so sold, how conditions should be penned, 28.

ENTRY:
may be made in person, or by another party, 231.
of one joint tenant or coparcener the entry of all, 231.
necessary to perfect the title of the heir, ii., 128.
what acts will be construed to amount to, ii., 128.
power of, to secure annuity or rentcharge, No. XLIII., clause 7, p. cxii.; No. XLV., clause 10, p. cxxxiv.

ENTRY, RIGHT OF:
will now pass by deed, 153.
not defeated by descent, 459.
not saved by continual claim, 459.
confined to twenty years, 459.
when time begins to run, 459.

EQUITABLE ESTATES:
may be enjoyed in the same condition as legal estates, 16.
owners of may convey, 16, 17.
may call upon trustees to convey to them, 17.
application of the rule in *Shelley's case* to, 245.
not formerly liable to judgments, ii., 80.
rendered so by recent enactments, ii., 80.

EQUITABLE MORTGAGEE:
considered as a purchaser within statute 27 Eliz. c. 4, 226.

EQUITY (see COURTS OF EQUITY.)

EQUITY OF REDEMPTION:
purchaser of, should indemnify vendor from mortgage deed, ii., 143.
form of conveyance of, by mortgagor to purchaser, No. V., pp. xiii., xvi.

ERASURE:
in documents should be mentioned in abstract, 264.
how far a revocation in a will, 436, 437.

ERRORS:
clauses directing that errors in description of property shall not annul sale, 25, 38.

ESCROW:
when a deed is delivered as, it should be ascertained that all the conditions have been performed, 227.
does not take effect till the conditions are performed, 277.

ESTATE:
the word would, prior to recent Will Act, have passed the fee, 306—310.
might have been restricted to a more limited meaning, where the intent was apparent, 308.

ESTATE FOR LIFE:
vendor's solicitor should ascertain how it may be sold to best advantage, 7.
may be alienated, unless restrained by express condition, 151, 163, 184.
what alienation of, will create a forfeiture, 184, 185.
distinction between, and estates *pur autre vie*, 463.
estate *pur autre vie* will merge in, when, 463.
when not, 464.
practical suggestions for investigating titles, 464.
can only pass by the same modes of assurance as are requisite to convey the inheritance, 464.
will arise by implication, 465, 468.
may also result, 468.
what acts will cause a forfeiture of, 474, 475.

ESTATE TAIL:
expense of barring must be borne by vendor, unless otherwise provided for, 31, 32, 35.
clause directing that vendor shall be at the expense of, 36.
operation of contracts upon, 150, 151.
effect of fines and recoveries upon, 170.
how barrable, 170, 184.
in copyholds, how barrable, 193.
how to be abstracted, 256.
devise of, will not now lapse by death of tenant in tail, if he leave issue in testator's lifetime, 333.
what words will create, 334, 354.
when it will arise by implication, 354.
in copyholds (see COPYHOLD.)

ESTATES AT WILL:
what so considered, 68, 69.

ESTATES DURING WIDOWHOOD:
construed as estates for life, 465.

ESTATES FOR YEARS (see LEASEHOLDS.)

ESTATES OUTSTANDING:
when it will be advisable to get them in previously to offering property for sale, 7.
clause directing that expense of shall be borne by purchaser, 32, 114, 119.
doubtful whether sheriff can sell them under an execution, 223.

ESTATES PUR AUTRE VIE:
vendor's solicitors should ascertain how it may be most profitably disposed of, 7.
considered as an estate of freehold, 463.

ESTATES PUR AUTRE VIE—*continued.*
will merge in an estate for a man's own life, 463.
can only be transferred by modes of assurance adapted to estates of inheritance, 464.
how it may arise, 471.
how transmissible, 471.
when it will devolve upon the real, and when upon personal representation, 471.
not devisable under Statute of Wills, 471, 472.
how so rendered by Statute of Frauds, 472.
how chargeable in the hands of heir as special occupant, 472.
when transmissible to executors, 472, 473.
operation of stat. 14 Geo. 2 upon, 472.
when distributable as personalty, 472, 473.
will now pass under a general devise of real estates, 473.
must be ascertained that grantor has power to dispose of, 474.
existence of lives should be ascertained, when, 478.
not liable to dower or curtesy, 481.

ESTOPPEL:
all parties to an indenture will be bound by, ii., 167.
but a deed poll will be binding by, only on the party making it, ii., 167, 168.

EVIDENCE:
stipulations that recitals shall be sufficient, 67, 87.
parol inadmissible to add to, subtract from, or contradict a written instrument, 67, 87.
when admissible in equity, 88, 89.

EXCEPTIONS:
in a deed, practical observations upon, 193, 194.
to master's report, practical observations respecting, ii., 268, 269.

EXCHANGE:
in conveyances by way of, will require a double abstract, 246, 247.
formerly raised an implied warranty, 246.
alteration in the law of, affected by recent enactments, 247.
at common law, what, 161, 162.
how effected by mutual releases, ii., 162.
modern mode of conveyance by way of, No. XXVIII., p. lxxviii.

EXECUTION OF DEEDS:
clause of, how to be abstracted, 257.
if done in any particular manner, it should be so stated, 258.
purchaser has no right to call upon vendor for the proof of, ii., 130.
ceremonies to be observed in the, ii., 223.

EXECUTION OF WILLS (see WILLS.)

EXECUTORS:
have an absolute power of disposition over leasehold property, 222, 260, 556, 557.
disabled from purchasing the testator's effects, 234.
whether renouncing, are disabled from purchasing, 234.

EXECUTORS—*continued.*
in sales of leasehold by purchaser, exonerated from seeing to the application of purchase-money, 260, 556, 557.
assent of, essential to give a good title to leasehold property, 267.
office extract of will, evidence of appointment of, 276, 277.
assent of, necessary to vest term in devisee (see ASSENT OF EXECUTOR.)
when a power of sale will accrue to, by implication, 330.
whether an authority given to several will survive, 330, 331.
whether power given to several may be executed by some when the rest renounce, 332.
may file a claim instead of proceeding by bill of complaint in equity, ii., 272.
form of conveyance by, in concurrence with heir of mortgagee, No. XII., p. xxxv.

EXECUTORSHIP:
when transmissible, 552, 553.
not transmissible through, 553.

EXECUTORY DEVISES:
and contingent remainders, distinctions between, 365.
may be limited after an estate in fee-simple, 365.
cannot be barred, 366.
recent enactments respecting, 366, 367.
are incumbrances which are matter of title, ii., 70, 144.
practical observations upon purchases of estates subjected to, No. XXIV., p. cxxiv.

EXECUTORY INTERESTS:
rendered alienable by statute 8 & 9 Vict. c. 106, p. 153.

EXECUTORY TRUSTS:
Courts of Equity have allowed a different construction respecting, than in the case of trusts executed, 345—347.

EXPECTANT HEIRS:
dealings with, how regarded in equity, 245.

EXPENSES (see COSTS.)

FACT:
how to be set out in abstract, 252, 253.
every, mentioned in abstract should be supported by the proper evidence, 276, 277.

FATHER:
purchases by, in the name of a child, when considered an advancement, 224.
under a moral obligation to support his wife and children, 224.
what acts of, will be sufficient to repel the presumption of intended advancement of children, 226.
if a trader, purchase by, in the name of a child will not be good against creditors, unless he was solvent at the time of purchase, 226, 227.

FATHER—*continued.*
but if then solvent, his subsequent insolvency will not invalidate the settlement, 227.
could not formerly have derived real property through a son, 449.
alterations effected by recent enactments, 449, 450.

FEE SIMPLE:
will pass without words of limitation, 303, 306, 328.
when it will arise by implication, 304, 313.

FEME COVERT (see MARRIED WOMAN, HUSBAND AND WIFE.)

FEOFFMENT:
made without apparent cause renders inquiry necessary, 277.
in ancient times the usual mode of conveyance, ii., 154.
would formerly have cleared all disseisins, and turned all estates in mere rights, ii., 154.
alterations in law relating to, effected by recent enactments, ii., 154.
stamp duty was until recently chargeable on conveyances by, as if lease for year had been used, ii., 155.

FIAT IN BANKRUPTCY:
recital of, No. XVIII., p. li.

FINE:
levied by a lunatic, how far valid, 161, 162.
effect of, upon estates tail, 171—183.
analogy between, and assurances under the Fine and Recovery Substitution Act, 171—173, 180—183.
defects in, how cured, 183.
how to be abstracted, 251.
if levied without ostensible cause, renders further inquiry necessary, 277.
ON ADMISSION TO COPYHOLDS:
double, will attach, when, ii., 25.

FIRE:
losses by, between contract and conveyance, must be borne by purchaser, 479.

FIXTURES:
will generally pass under the ordinary terms of conveyance, 37.
if to be paid for by purchaser, a stipulation to that effect will be necessary, 37.
form of clause stipulating that they shall be paid for by purchaser, 37.

FOLIOS:
in an instrument, how to be calculated, ii., 292, 293.

FORECLOSURE:
proviso that power of sale shall not debar mortgagee of right of, No. VII., clause 7, p. xxiv.

FORFEITURE:
copyholder will incur, who grants leases not authorized by custom, for more than one year without licence from the lord, 190.

FORFEITURE—*continued.*
also for committing waste, 190.
or disposing of the copyholds by a common law mode of assurance, 192.
must be ascertained that tenant for life has done no act to incur, 474, 478.
what acts will amount to, 475.
what modes of assurance would have operated as, 475.
no conveyance of freehold estates can now produce, 475.
causes of, will be barred after twenty years, 475.
derivative estates not determined by the forfeiture of the original estate, 475.
property taken by executors in that character not liable to by their acts, 554.
as to right of lord, in case of forfeiture of particular estate in copyholds, ii., 33.

FRAUD:
infancy or coverture will afford no protection against acts of, by those parties, ii., 208.

FRAUDS (STATUTE OF):
requires all agreements to be in writing, 68.
agreements within first and second sections, 68, 70.
licence not within, when, 70, 71.
exceptions in, with respect to leases, 72, 73.
interests within the third section, 73, 74.
agreements within the fourth section, 75, 87.
sales before master not within, 81.
part performance will take case out of, when, 83—86.
parol evidence, how far admissible under, 87, 89.
what will be a sufficient signature under, 89, 96.

FRAUDULENT CONCEALMENT:
of defects will vitiate sale, when, 26, 27.
will render party liable to an action, 27.

FRAUDULENT CONVEYANCE:
what species of assurance will be so considered, 223, 228.
will not affect *boná fide* purchasers even with notice, 223.
conveyance taken in name of wife or child not considered in light of a, when, 224—226.
purchaser of an equitable interest will be entitled to protection against, 227.
also equitable mortgagees, 227.
of relief and protection against, ii., 96.

FREEBENCH:
husband may defeat wife's title to, by alienation, 169; ii., 4.
right of widow to, will depend upon the custom of the manor, ii., 3. 4.
will be destroyed by the husband's bankruptcy, ii., 4.
or by his surrendering to the use of his will, ii., 5.

FREEBENCH—*continued.*
or by his will, although no surrender be made to the use of it, ii., 5.
jointure in lieu of dower and thirds will be an equitable bar to, ii., 5.

FREEHOLD:
estates for life are so considered, 462.

FREEHOLD ESTATES:
practical observations upon the investigation of titles of, 299, 462.
as to incumbrances affecting, ii., 69, 147.
practical suggestions for preparing the conveyances of, ii., 165, 227.

FRUCTUS INDUSTRIALIS:
whether sales of, are within the Statute of Frauds, 78.

GAVELKIND:
custom of, is noticed by the law, ii., 8.

GENERAL WORDS:
how to be abstracted, 255.
practical observations upon recent statutory enactments respecting, ii., 192.

GRANDFATHER:
purchase by in the name of a grandson when considered as advancement, 225.

GRANT:
all corporeal hereditaments now declared to lie in, as well as in livery, ii., 156.
deed of, now sufficient to pass all estates of inheritance, ii., 156, 157.
stamp duty for lease for a year would until recently have attached on all conveyances by way of, ii., 157.
construction of the word in a conveyance, ii., 181, 182.
will not raise an implied warranty, 182.
law now altered by statute 13 & 14 Vict. c. 97, ii., 298.

GRANT AND RELEASE:
form of conveyance by, No. III., pp. viii., ix.

GRANTING CLAUSE:
how to be set out in abstract, 252.
how parties in, must convey and take by, ii., 179, 184, 187.
where parties take by use or trust, releasee or trustee are only named in this clause, when, 185.
persons taking by remainder not usually named in this part of the deed, 185.
when the fee is to pass words of limitation should be annexed to the grant, ii., 185.
if omitted, it may be supplied by the *habendum*, ii., 186.
will control the *habendum*, when, 195.

GROWING CROPS:
sales of, what considered within the Statute of Frauds, 70.
what not, 78.

HABENDUM:
how to be set out in the abstract, 254.
where there are several clauses, 255.
when rejected as repugnant to the premises, 294; ii., 195.
office of, to limit the estate, ii., 194.
ought to be omitted in some modes of assurance, ii., 194.
will not generally be allowed to control the premises, 295.
how far it will be allowed to explain the premises, ii., 295.
words of limitation omitted in granting clause may be supplied by, ii., 295.
operative words in, ii., 196.

HALF BLOOD:
could not formerly have inherited to each other, 319.
law respecting, how far altered by recent enactments, 319, 455.

HEIR:
infant, how empowered to convey, 211, 215.
reference to, in a will may create an estate in by implication, when, 320.
may be put to his election, when, 387.
when entitled to unappropriated funds, 388, 389.
of testator, would formerly have taken by descent, although the estate was devised to him, 456.
will now take as devisee, 456, 457.
descent upon would formerly have tolled an entry, 259.
now deprived of this advantage, 259.
whether descent of, can be traced through an attainted person, 460, 462.
cannot be compelled to perfect an imperfect assurance of his ancestor, ii., 107.
but when he does so he will be bound by it, 107.
where title is delivered through seisin in, must be shown, ii., 128.
form of conveyance by, of deceased mortgagee, No. XII., p. xxxv.
conveyance by, and personal representatives of a vendor who dies pending the suit, No. XVI., p. xlv.
conveyance by in concurrence with trustees under power of sale contained in a will, No. XXI., p. lxi.
what terms will supply the place of that word, so as to pass the inheritance, 306, 312.
when the term will be restricted to mean heirs of the body only, 314.

HEIRS OF THE BODY:
limitation to, after a preceding estate of freehold in the ancestor, will vest an estate tail on him, 335.
aliter when no preceding estate of freehold is limited to him, 338.
limitation to, as purchasers, will cause the estate to descend in like manner as if derived through the ancestor, 338, 339.
may be explained to mean sons, children, or the like, when, 339.
what words will supply the place of, 350, 354.

HEIRSHIPS:
expense of proving must be borne by vendor, 32.

HEIRSHIPS—*continued.*
form of clause stipulating that the costs of proving shall be borne by purchaser, 32.

HEREDITAMENTS:
the fee would not formerly have passed under a devise in those terms, 311.

HUSBAND AND WIFE:
wife cannot contract or convey without his consent, 164.
extent of husband's power over wife's property, 167.
has an absolute power over her leaseholds, 168.
if married subsequently to 1834, he may debar her of her dower, 169.
may defeat his wife's free-bench, 169; ii., 4.
where wife is protector of a settlement, 174.
when husband's concurrence may be dispensed with in conveyances by wife, 174, 175.
term acquired by wife subsequent to marriage, may be taken in execution for husband's debt, 223.
purchase by husband in the name of wife, how far binding, 224.
goods which she takes as executrix do not vest in him, 554.
is entitled to administer in her right, 554.
form of conveyance by the latter concurring for the purpose of releasing her dower, No. IX., p. xxx.; No. XXVII., p. lxxvi.

IDENTITY:
of parcels, what will be sufficient, ii., 127, 128.

IDIOTS:
incapable of entering into contracts, 157.
as to fines levied by, 161, 162.

IGNORANCE:
of rights in a party who executes a conveyance, will not be allowed to prejudice a *bonâ fide* purchaser, ii., 107.

ILLEGITIMACY:
in a child will not prevent a purchase taken in his name by a putative father from operating as an advancement, 224.

ILLUSORY APPOINTMENTS:
how far equity would have interfered in the case of, 390.
the appointment of any portion, however trifling, would not have been so construed at law, 391.
equitable doctrine respecting, 391, 392.
recent statutory enactments relating to, 392

IMPLICATION:
when estates will arise by, 219, 220, 298, 312, 313, 465—467.
when an estate in fee, 313.
when an estate will arise to the heir by, 320.
when an estate tail will arise by, 354, 355.
when an estate for life will arise by, 465, 467.
how such may be rebutted, 469, 470.

IMPLICATION—*continued.*
doctrine of estates arising by, extends only to wills, 467, 468.
an estate cannot arise by, upon a surrender of copyholds, ii., 31.

IMPRISONMENT:
formerly considered as a legal disability, 210.
not inserted as such in recent Statute of Limitations, 210.

IMPROVEMENTS:
agreement that tenant shall pay an additional sum beyond his rent in consideration of, not considered as rent, 73.
nor an agreement concerning lands within the Statute of Frauds, 73.
laying out money in, evidence of part performance, 83, 84.

INADEQUACY:
of consideration, no ground for avoiding purchase, ii., 243.

INCLOSURE ACTS:
title to lands under, will require double abstract, when, 264.
alterations in the law effected by recent statutory enactments, 247.
office copies of awards under, should be supplied, when, 277.

INCREASED VALUE:
stipulation that it shall not affect previous agreement, 138.

INCUMBENTS:
how enabled to raise money on their livings, 58.
as to exchanges by, 58.

INCUMBRANCES:
when property is intended to be sold subject to, they should be particularized in the conditions of sale, 17.
annuities are considered such, and not mere matters of conveyance, 17.
notice of to agents, equivalent to notice to principal, 40, 44.
to be discharged by vendor, 119.
indemnity may be given against, when, 119.
of the various kinds of, ii., 69.
what are matters of title, ii., 70—77.
what are only matters of conveyance, ii., 70, 77—95.
if vendor is unable to discharge, purchaser may rescind contract, ii., 70, 139.
which are mere matters of conveyance, however large in amount, no objection to title, ii., 70, 77.
mortgages now only considered as matters of conveyance, ii., 78
crown debts, ii., 78, 79, 80.
also judgments, ii., 80.
statutes and recognizances, ii., 82.
decrees, ii., 83.
lis pendens, ii., 83.
debts charged on real estates, ii., 83, 84.
legacies, ii., 87.
portions, ii., 88, 89.
legal estate outstanding, so considered, 89—95.

INCUMBRANCES—*continued.*
of protection against, 96—114.
protection against at law, ii. 96, 106.
protection in equity, ii., 106, 114.
dormant, equity will relieve against, when, ii., 108.
legal estate how far a protection against, ii., 108.
of the search for, ii., 132.
duty of purchaser's solicitor respecting, 132, 139.
he should also ask of vendors if there are any, ii., 132.
if latter denies that there are, he renders himself personally responsible if there be such, ii., 132.
vendor is bound to discharge all before he can call on purchaser to accept conveyance, ii., 135.
if such that title cannot be completed, vendor must pay the costs, ii., 135.
search for, may be postponed till immediately before execution of conveyance, if vendor's solicitor says there are no incumbrances, vendor not bound to discharge those discovered after execution of conveyance, unless covenants are ample enough to include them, or the vendor has been guilty of fraud in concealing it, ii., 136.
covenant, by mortgagee that he has not created, No. IV., clause 7, p. xii.
declaration by a vendor that the property contracted to be sold is free from, No. XLVI., p. cxxxix.

INDENTURE:
formerly both parts were written on same parchment, and cut through in a waving line, ii., 166, 167.
present practice only to indent the deed, ii., 167.
may be done at any time, ii., 167.
but could not operate as such until indented, ii., 167.
a more powerful instrument than a deed-poll, ii., 167.
necessity of indenting abolished by recent enactments, ii., 167.

INDUSTRIOUS CONCEALMENT:
will vitiate sale, when, 26, 27.

INFANCY:
a legal disability, 8.
difficulties respecting, how best obviated, 9.

INFANT:
cannot enter into a contract, 162.
cannot recover back deposit, when, 163.
aliter if fraud has been practised upon him, 163.
confirmation by, after he comes of age, how far binding, 163, 164.
what acts will amount to confirmation by, 163, 164.
how far bound by the acts of others, 164.
purchases of, made by him during minority, may be affirmed or waived on attaining majority, 163, 230.
once affirmed by, cannot afterwards be annulled, 163, 164, 230.
what acts will amount to a confirmation, 163.

INFANT—*continued.*
all contracts for the purchase of annuities by, void, 164.
trustee or mortgagee how empowered to convey, 211, 215.
may take as lessee, 505, 506.
but may elect to annul it on coming of age, 505.
but if he does so, will not be entitled to any consideration he may have paid for it, 505.
empowered to surrender leases for the purpose of obtaining renewals, 506.
may be an attorney for the purpose of surrendering copyholds, ii., 17.
legal estate outstanding in, no objection to title, 211, 215; ii., 89.
legal estates outstanding in, vendor must be at the expense of getting in, ii., 233.
heir of deceased mortgagee, form of conveyance by, No. XIX., p. liv.
covenant for conveyance by, on attaining majority, No. XX., clause 7, p. lix.

INHERITANCE:
the fee will pass under those terms, 311.

INJUNCTION:
equity will grant to restrain waste, 476, 478.
to prevent tenant for life from cutting down ornamental timber, 477.
but not other timber, if done in a husbandlike manner, 477.
will be granted to restrain the opening of mines, when, 477.
also to restrain the pulling down of houses, 477.
to restrain pretended purchaser in possession from committing waste, ii., 262.
but before granting court will put vendor upon proper terms, ii., 262, 263.

INQUIRY:
what circumstances will render further, necessary, 276, 277.
what is sufficient to put a party upon a sufficient notice, when, ii., 114.
vague indefinite rumours insufficient to put party upon, ii., 115.

INROLMENT:
essential to the validity of a disentailing deed, 178.
no proof of the deed having been executed, 178.

INSOLVENCY:
how to be stated in the abstract, 261.
as to proceedings in, under statute 8 & 9 Vict. c. 116, p. 262.
condition for avoiding estate upon, valid, 375, 376.
a fatal objection to a title, ii., 74.

INSOLVENT COURT:
should be searched, when, ii., 138.

INSTRUCTIONS:
effect of agreement sent as, 96.

INSURANCE:
if vendor's estate is determinable on lives, his solicitor should inquire if any of them are insured, 7.

INSURANCE—*continued.*
should ascertain how the policy of, may be disposed of to best advantage, when, 7.
may be effected on unhealthy lives, 7.

INTEREST:
clause directing that purchaser shall pay, 29, 30.
proviso that payment of, shall not confer right of entry, 30.
practical remarks as to reservation of, 46, 47.
clause directing that vendor shall receive, 47.
auctioneer not generally liable to, upon deposit, 53.
when he will be so liable, 53.
when purchase-money will carry, 101, 103.
rules respecting, will apply equally to an estate in remainder, 101.
purchaser, not generally chargeable with, where purchase-money has been lying idle, 101, 102.
clause stipulating that purchaser shall pay, 123.

INTERPLEADER ACT:
auctioneer may protect himself under, when, 53.

INTESTACY:
letters of administration evidence of, 276.

INVALID LEASES:
how far capable of being amended or confirmed, 163.
if granted during minority infant may confirm upon coming of age, 163.
receipt of, or distraining for rent after attaining his majority, will operate as a confirmation of, 163.
in consequence of deviation from terms of the power, to be deemed as contracts in equity, when, 499.
acceptance of rent to be deemed a confirmation of, 500.
at the time of granting may become valid, if the grantor afterwards becomes lawfully entitled to grant, 500.

INVENTORY:
when considered as forming part of a deed, 293, 294.

INVESTIGATION OF TITLE:
purchaser must bear expenses of, where abstracts show a good title, ii., 231.
purchaser entitled to costs of, where title proves defective, ii., 231, 232.

ISSUE:
inability to prove failure of, an objection to title, 8.
whether a limitation over upon dying without, will create an estate tail, or an executory devise, 314, 316, 317.
operation of recent Will Act respecting, 314.
when a word of limitation, 350, 351.
in tail, when bound to elect, 380.
when the terms "dying without," &c., will be construed to relate to the death of the party, 366.
distinction in the construction of "dying without," when applicable to freehold, and to chattel property, 394, 395.

JOINT PURCHASES:
will not go over to survivor, when, 156.

JOINT TENANCY:
estates in, how created, 358, 359.
distinction between the construction of deeds and wills with respect to the creation of estates in, 358.
construction of, favoured in cases of executory trusts, 360.
liable to judgments, ii., 82.

JOINT TENANTS:
may convey their estates, 151, 155.
when the estate will not survive in equity, 156.
when it will survive at law, 155.
different construction prevails respecting, in a will than in a deed, 156

JOINTURE:
matters of title, and not merely of conveyance, ii., 70, 72.
a good bar to dower, ii., 73, 74.
if jointress be evicted from, her right of dower will revive, ii., 73.

JOURNEYS:
expense of, to examine muniments of title must be borne by vendor, when, 32; ii., 124, 125.
clause exonerating the vendor from these expenses, 32.
to inspect deeds not in vendor's possession must be borne by him, 32; ii., 124, 125.
to inspect documents in London by solicitor will not be allowed, when, ii., 125.
but expenses of, will be allowed when documents are in different parts of the country, ii., 125.

JUDGMENTS:
mere matters of conveyance, 17; ii., 70, 80.
formerly not usual to mention them in abstract, 263.
ought now to be set out in, 263.
copyholds formerly unaffected by, ii., 81.
but now are liable to, ii., 81, 82.
formerly no more than a lien on the lands, ii., 80, 81.
an undivided moiety only could have been extended under, ii., 80, 81.
now made an actual charge, ii., 81.
the whole lands may be now extended under, ii., 81.
will include copyholds, ii., 81.
also trust estates, ii., 81, 82.
although duly registered, not to be binding beyond five years, ii., 82.
on tenant in tail, how far binding, ii., 82, 134.
not binding on purchasers, unless duly registered, ii., 82.
execution of power of appointment would have overreached, when, ii., 109.
acquisition of legal estate how far a protection against, ii., 109.
act of registering no constructive notice of, ii., 117.

JUDGMENTS—*continued.*
aliter if the party has actual notice of it, ii., 117.
search for, how conducted, ii., 133.
purchaser's solicitor can rarely dispense with searching for with safety, ii., 133.
if his client be prejudiced by his neglecting to do so, he will be personally liable, ii. 134.
entailed property liable to, ii., 134.
cannot be dispensed with in sales by assignees of bankrupts, ii., 134.
entered up against mortgagor are charges upon surplus moneys under a power of sale contained in mortgage, ii., 134, 135.

LANDS:
fee would not have passed by that term prior to recent Will Act, 311.

LAND TAX:
defects in sales for the redemption of, how remedied, ii., 98, 100.
assessments, evidence of seisin, and identity of parcels, ii., 127.

LAPSE:
by death of devisee in testator's lifetime, 333.
estates tail will not now, under certain circumstances, 333.
when gifts to children or issue will not, 334.

LEASE (see LEASES.)

LEASE AND RELEASE:
conveyance by, introduced by Statute of Uses, ii., 155, 156.
both instruments operate but as one assurance, ii., 156.

LEASE FOR A YEAR (see BARGAIN AND SALE.)

LEASEHOLD ESTATES:
term for which they are holden should be correctly stated in particulars of sale, 13, 26.
covenants relating to should be accurately stated, 13, 14.
when vendor is unable to procure lessor's title, he should stipulate that purchaser is not to require it, 44.
clause adapted for that purpose, 45.
terms upon which premises are holden should be stated, 45.
clauses to that effect, 45, 46.
clauses where the property is sold in lots, 45, 46.
purchaser of, entitled to a clear sixty years' title, 247, 267.
how the title should be deduced, 247.
executors and administrators have an absolute power of disposition over, 259, 260.
in sales of, by personal representatives purchaser exonerated from seeing to the application of purchase moneys, 260.
how title to should be abstracted, 267, 268.
executor's assent necessary to confer a good title to, 267.
practical observations as to the investigation of titles of, 484.
must be ascertained that the lessor had power to grant, 484, 485.
that lease is valid, 484.

LEASEHOLD ESTATES—*continued.*
as to lessor's title, 485, 486.
rule relating to, does not affect bishop's leases, 486.
of limited interests in, 544—548.
may be made the subject of a settlement, 548, 549.
cannot strictly be entailed, 545.
mode of framing executory trusts of, 545.
words which would create an entail in freeholds, will confer the absolute interest, 545.
construction of the words "dying without issue," 546.
as to wills of, 548, 554.
assignment of, to a purchaser for the residue of an absolute term of ninety-nine years, with usual covenants, No. XXIX., p. lxxx.
form of assignment of, determinable on lives, No. XXX., p. lxxxiv.

LEASES:
notice of, construed as notice of terms of tenancy, 18 ; ii., 114.
clause where property is to be sold subject to, 18.
notice of terms of tenancy, when, 18.
what are within the Statute of Frauds, 67, 74.
cancelling will not effect a surrender of, 73, 74.
granted by infants, how far capable of confirmation, 163.
root or origin of title in, 267.
should contain a sufficient description of the property, 484.
should be ascertained that it contains no burdensome covenants, 484.
as to power to lessor to grant, 485.
under powers (see POWERS.)
void at law, how far attainable in equity, 491.
equity will grant relief, where power to grant has been badly executed, 497.
operation of statute 12 & 13 Vict. c. 26, upon imperfect leases, 498, 502.
capacity to receive, 502—504 (see ALIEN, OUTLAW, LUNATICS, MARRIED WOMEN.)
essential to the validity of, 506—515.
where an instrument purporting to be, will only operate as an agreement for, 506, 511.
proper criterion for distinguishing from mere agreements, 507.
recent enactments respecting, 510, 511.
certainty of term essential to its validity, 511.
as to conditions to defeat, 511—513.
at common law, not perfected until entry, 513—515.
as to rents reserved under (see RENTS.)
when considered as incumbrances, ii., 71.
in some cases a subject for compensation, ii., 72.
when not, ii., 72.
possession under by tenant, constructive notice of, when, ii. 72.
evidence of seisin or ownership, ii., 127.
as to stamps for (see STAMP DUTIES.)

LEASES UNDER POWERS:
under ordinary powers must be made in strict pursuance of them, 490.
for life or years, how construed, 490, 491.
voidable at law, when granted for a longer time than power prescribes, 490, 491.
only void in equity as to excess, 491.
but not where they contain stipulations or covenants unwarranted by the power, 491.
whether, when a person having both a power and an interest, grants a lease without referring to his power, the lease will take effect out of his power, or his interest, 492.
power to grant leases in possession, will not confer a right to grant *in futuro*, 492.
what will be embraced under the terms usually letten, 493, 494.
what will be considered as the best rent, 494, 495.
as to provisoes for re-entry in, 495, 496.
as to the clause against committing waste, 496.
no objection that lessor takes beneficially under, 497.
equitable relief where power has been badly executed, 497.
operation of statute 12 & 13 Vict. c. 26, upon defective leases, 498—501 (and see INVALID LEASES.)

LEASES UNDER TENANTS IN TAIL:
how far validity of, will depend upon a due exercise of the power, 487.
as to those granted by tenant in tail, 487—490.
are confined to corporeal hereditaments, 488.
what will be considered the usual customary rent, 488, 489.
how determinable, 489, 490.
voidable, how far personally binding on grantor, 490.

LEGACIES:
need not be specified in abstract when the property is devised upon trust to pay debts, 259.
charged on real estate an incumbrance, ii., 70, 87.
a matter of conveyance, and not of title, ii., 70, 87.
when purchaser is exonerated from seeing his money applied in application of, ii., 86, 87.
distinction between charges for payment of debts and, ii., 87, 88.
payment of, how far evidence of payment of debts, ii., 87.
purchaser should ascertain that they have been discharged, ii., 87.
when purchaser is exonerated from suing, his purchase money applied in discharge of them, ii., 87.

LEGACY DUTY:
if property is sold subject to, it should be so stated in conditions, 20.

LEGAL ESTATE:
expense of getting in, devolves upon vendor, 31, 32.
it must be ascertained in whom it is vested, 279.
outstanding an incumbrance which is merely a matter of conveyance, and not of title, ii., 78, 89.

LEGAL ESTATES—*continued.*
also when outstanding in an infant, ii., 89.
how far a protection to purchasers, 108—114.
alterations in the law respecting, effected by recent enactments, ii., 89, 90.

LEGATEES:
conveyance by, for the purpose of releasing their claims on the property, No. XXI., p. lxi.
may file claim, in lieu of bill of complaint in equity, 271.

LESSEES:
all persons capable of becoming purchasers may be, 502—506.
see also ALIENS, FELONS, INFANTS, LUNATICS, MARRIED WOMEN, OUTLAWS, TRAITORS.

LESSOR'S TITLE:
vendor cannot compel a specific performance without showing, when, 44, 247, 486.
how stipulation should be penned to prevent vendor from being compelled to produce, 45.
should be set out in abstracts of leaseholds, 267.
stipulation that purchaser shall not require, will not preclude him from rescinding contract if he can show such title to be bad, 268.
rule respecting, does not affect bishop's leases, 486.
(see LEASEHOLD PROPERTY.)

LETTERS:
agreement may be established through the medium of a correspondence by, when, 95.
it will be sufficient if one be stamped with a *1l.* 15*s* stamp, 108.
observations on statute 7 Vict. c. 21, respecting, 111.

LICENCE:
not conferring an exclusive right to the soil whether within the Statute of Frauds, 70—72.
although invalid, will, until countermanded, excuse a trespass, 72.
quære, if it can be granted by parol, 72.
to assign if once given, will discharge the condition for ever, 189.
unless restricted to some particular mode of disposition, 189.
of lord necessary to empower copyholder to lease for more than a year, 191, 193.

LIEN:
of vendor on purchased property for his unpaid purchase money, 98; ii., 89.
of purchaser, in case of contract being rescinded after he had paid his purchase money, 99.
will affect a sub-purchaser who buys with notice of, 99; ii., 89.
aliter, if he has no notice, 99; ii., 89.
how it may be destroyed, 100.

LIGHTS:
vendor should be careful to reserve, when, 47.

LIMITATIONS (STATUTES OF):
operation of, upon the estates of mortgagee in possession, 210.
what are reckoned as disabilities under, 210.
what parts of Her Majesty's dominions are not to be considered as beyond the seas within the meaning of, 210.
does not run as between trustee and *cestui que trust*, 217.
begins to run upon conveyance to a purchaser, 217, 318.
has not shortened the period from which titles are to be deduced, 242.
new, will not confer a good title, unless its origin can be shown, 243.
operation of, with respect to advowsons, 244.

LIMITATION (WORDS OF):
should be abstracted, 259.

LIMITED INTERESTS:
persons taking, may have an absolute power of disposition, when, 152.

LINEAL WARRANTY:
would have barred an entail, 183.

LIQUIDATED DAMAGES:
clause directing that losses upon a re-sale shall be considered as, 41, 42, 138.
entire sum may be recovered, if clause be properly penned, 104, 105.
aliter, where they are stated by way of penalty, 105.
may be recovered in action of debt, when, 105.
stipulated to be paid for breach of contract, 105.
payment of, will not release the parties from the contract, 105.

LIS PENDENS:
was supposed constructive notice of that fact, ii., 83.
now, purchasers are unaffected by, unless it be duly registered, ii., 83, 116.
protection of purchasers against, ii., 102.
should be searched for, when, ii., 137.

LIVERY OF SEISIN:
the manner in which it is given or received should be stated in abstract, 258.

LIVES:
dropping of should be mentioned in conditions of sale, 14.
where estates depend upon, they must be shown to be in existence, 478.
loss by dropping of, between contract and conveyance, must be borne by purchaser, 478, 479.
enactments respecting evidence of existence of, 481.

LOCO PARENTIS:
when grandfather will be considered as standing unto grandson, 225.

LOSSES:
by resale to be recovered as liquidated damages, 41.
by insolvency of auctioneer, must be borne by vendor, 55.
incurred on the property between contract and conveyance must be borne by purchaser, when, 478, 479.

LOST DEEDS:
will not afford ground for rescinding contract if vendor can produce copies, when, ii., 126.
of mesne assignments in leaseholds, may be made good by the recitals, ii., 126.

LOTS:
when estate is sold in, each purchaser entitled to attested copies, when, 6.
estate when sold in, how particulars of sale should be framed, 12, 13.
when no title can be made to one or more of, whether purchaser can be compelled to take the residue, 24, 25; ii., 239.
purchaser of each, to pay auctioneer for his trouble, 29.
practical observations when leaseholds are sold in, 45.
when property is sold in, some provision should be made for rights of way, why, 25.
clause stipulating that if title cannot be made to some, purchaser shall accept the rest with a proportionate compensation, 38.

LUNATIC:
disabled from entering into contract, 157.
acts done by, may be annulled by his committee, 157, 230, 231.
not allowed to plead his own disability, 157.
how far equity will be likely to interfere, 157—159.
acts done by, during lucid intervals, valid, 159
how far bound by the acts of other parties, 161.
fines and recoveries by, 161.
when husband, whose wife is protector of a settlement, is the, 174.
Court of Common Pleas may dispense with his concurrence, 174, 175.
protector of settlement being such, Court of Chancery shall be protector, 175.
legal estate outstanding in, no objection to title, ii., 89.
not incapable of taking for their own benefit, 505.
legal estates outstanding in, vendor must be at the costs of obtaining conveyances of, 231.

MALICE:
must be proved to support an action for slander of title, 60.

MANDAMUS:
will lie to compel lord to admit copyholder, ii., 15.

MARRIAGE:
as to conditions in restraint of, 372, 375.
expense of proving must be borne by vendor, 32.

MARRIAGE—*continued.*
clause exonerating him from this expense, 32.
should be stated in abstract, 264.

MARRIED WOMAN:
disabled from entering into contracts, 164.
cannot convey without her husband's concurrence, 164.
disposition by her must be made in pursuance of Fine and Recovery Substitution Act, 164.
may convey without her husband's concurrence, under a power of appointment, 165.
this power of disposition unaffected by the Fine and Recovery Substitution Act, 166.
cannot convey as a trustee without her husband's concurrence, *semble*, 166, 167.
power of husband over property of, 167, 168.
husband has the absolute power over her leaseholds, 168.
may be debarred of her dower, how, 169.
also of her freebench, 169.
how she may convey her estate tail, 169.
acknowledgments by, 169, 170.
her power as protector of a settlement, 170.
operations of late Real Property Act upon dispositions by, 170.
may purchase during coverture, subject to her husband's right to annul the sale, 230,
but if she survive her husband, she may avoid the sale, 231.
capable of taking as lessee, 505.
enabled to surrender leases for the purpose of renewal, 505.
may be made attorney for the purpose of surrendering copyholds, ii., 17.

MASTER IN CHANCERY:
as to sale before (see SALE BEFORE MASTER.)
as to references to, ii., 265, 269.
application for reference to, how made, ii., 266, 267.
course of proceedings where he reports against title, ii., 267, 268
where he reports in favour of title, ii., 268.

MEASUREMENT:
of lands formerly reckoned according to the custom of the country, 16.
alteration in the law respecting, effected by more recent enactments, 16, 17.

MENTAL CAPACITY:
necessary to enable parties to enter into a contract, 157—162.

MERGER:
definition of, 407.
often an important subject in investigating a title, 407.
when greater and lesser estate coincide in the same person, the lesser will merge in the greater, 407.

MERGER—*continued.*
but the larger estate must be the more remote one, 407.
there must be no intermediate estate in a stranger interposed between the two estates, 408.
an estate acquired by operation of law will not cause, 408.
of estates *pur autre vie* in estates for, when incurred, 464.
must be ascertained that lessee for years has done no act to cause, 484.
of years in years, 538.
intermediate estate will prevent, when, 539.

MINERALS:
as to right to, in copyholds, 248, 249.
as to stamp duties in respect of (see STAMP DUTIES.)

MINES:
as to the reservation of, 22.
in grant of double abstract, will be necessary where they form a distinct property from the freehold, 248.
discovered subsequent to contract, will not entitle vendor to increased price on that account, 479.
in course of work, 479.
as to stamp duties respecting leases of (see STAMP DUTIES.)

MINING SHARES:
sales of within Statute of Frauds, 79.

MISAPPREHENSION OF FACTS:
will revoked under, no revocation, when, 437.

MISDESCRIPTION:
when sufficient to enable purchaser to rescind contract, 13—18.
clause providing that it shall not vitiate sale, but be made good by compensation, 38, 115.
purchaser to rescind contract in case of, 122; ii., 240, 241.
clause that trifling shall not annul contract, 126.

MISREPRESENTATION:
will vitiate sale, when, 13; ii., 200, 241, 243.
merely as to quantity may be matter of compensation, how far, 15.
as to tenure, will vitiate contract, 20, 21.
will subject party to action, when, 28.
clause providing it shall not annul sale, 38.

MISTAKE:
destruction of will by, no revocation, 435.
defence against a specific performance, when, ii., 107.

MIXED PROPERTY:
clause where property is so situated providing for compensation, 25.
observations upon, 25.

MONEY HAD AND RECEIVED:
for deposit will lie, when, ii., 256.

MONEY HAD AND RECEIVED—*continued.*
action for, usually adopted for the purpose of receiving back deposit, ii., 256.
evidence necessary to support action for, ii., 256, 257.

MORAL OBLIGATION:
husband or father under, to support wife and children, 224.
where a sufficient consideration to support a conveyance taken in the name of wife and children against subsequent purchasers, 224, 225.

MORTGAGE:
property being subject to, is mere matter of conveyance and not of title, 17; ii., 70, 77, 78.
clause, where the estate is intended to be sold subject to, 18, 127.
stipulation that part of purchase money shall remain upon, 125.
formerly considered to form matter of title, ii., 78.
now settled to be mere matter of conveyance, ii., 78.
aliter, mortgagor has by his own act precluded himself from compelling mortgagee to reconvey, ii., 78.
form of recital of, by demise, No. IV., clause 2, p. x.
form of, and conveyance by the same instrument, No. VII., p. xxi.
recitals of, No. XV., clause 2, pp. xlii., xliii; No. XVIII., clause 2, p. l.
what species of assurance will be construed as, ii., 317, 319.
conditional sales as distinguished from, ii., 319, 320.
as to equitable, ii., 321, 322.
to secure an annuity, ii., 322.
as to stamp upon (see STAMP DUTIES.)

MORTGAGEE:
cannot sell before foreclosure, unless under a trust, or power of sale, 208, 209.
fine levied, or recovery suffered by, will not bar mortgagor, 209.
lease made by without mortgagor's concurrence not binding on the equity of redemption, 209.
may sell or lease under a power of sale or leasing, 209.
may confer a good title without mortgagor's concurrence, in what cases, 209, 211.
not disabled from purchasing equity of redemption, 236.
cannot grant leases, 501.
of leaseholds bound by the covenants, 523.
leases renewed by, will enure for benefit of equity of redemption, 535.
may file a claim instead of bill of complaint in equity, ii., 272.
form of conveyance by, to a purchaser with mortgagor's concurrence, ii., No. IV., pp. x., xii; No. VI., p xvii.
conveyance to, in fee by mortgagor, No. VIII., p. xxvii.
conveyance to a purchaser under a power of sale contained in mortgage deed, No. XV., p. xlii.
form of covenant from, that he has done no act to incumber, No. XV., clause 7, p. xliv.

MORTGAGE MONEY:
recital that it is still due, but that all interest has been paid, No. IV., clause 3, p. x.; No. V., clause 3, pp. xiii., xiv.
covenant from purchaser to discharge, No. V., clause 11, p. xv.
also to indemnify vendor from all claims in respect of, No. V., clause 12, p. xvi.
declaration that it shall be deemed the debt of the purchased premises, No. V., clause 13, p. xvi.

MORTGAGOR:
cannot grant leases, when, 501.
but such leases will be binding as between him and his lessee, 502.
has no right to call upon mortgagee to produce title deeds, ii., 143.
selling equity of redemption is entitled to call on purchaser to indemnify him against mortgage, ii., 143.
conveyance by, to purchaser with concurrence of mortgagee, No. IV., pp. x.—xii.; No. VI., p. xvii.

NATURALIZATION:
will only enable an alien to hold lands subsequently acquired, 231.

NEGOTIATION:
clause stipulating that it shall not waive vendor's right to annul sale, 121.

NEXT-OF-KIN:
when entitled to unappropriated funds, 309.

NOTICE:
of lease, notice of terms of tenancy, 22; ii., 114, 127.
to agent, notice to principal, 40; ii., 117.
of prior voluntary conveyance will not affect a subsequent *bonâ fide* purchaser, 220, 211; ii., 96.
purchaser, for valuable consideration without, entitled to equitable protection against incumbrances, ii., 108, 109.
aliter, when he has, ii., 110.
will not debar a purchaser from protection against dower, ii., 110.
what will be deemed sufficient to deter a purchaser from equitable protection, ii., 114.
may be either positive or constructive, ii., 114.
knowledge of a lease, constructive notice of its contents, ii., 114, 127.
of a deed which recites another deed, constructive notice of such latter deed, ii., 114.
whatever is sufficient to put a party upon inquiry is sufficient in equity, ii., 114.
public act of Parliament so considered, ii., 114.
mere fact of possession of title-deeds unaccompanied with other circumstances, sufficient to affect a purchaser with, ii., 115.
vague rumours will not amount to, ii., 115.
what acts and circumstances will amount to, ii., 116.
aliter of a private act, ii., 116.
lis pendens formerly considered as, ii., 116.

NOTICE—*continued.*
to be so now, must be duly registered, ii., 116.
decrees not formerly considered as, when, ii., 116.
nor docketing of judgments, ii., 117.
parties having notice of, will be bound by, when, ii., 116.
act of, or fiat in bankruptcy is not, ii., 117.
nor the registration of a deed in a register county, ii., 117.
to agent, counsel, or attorney, notice to principal, ii., 117, 118.
must be in the same transaction, when, 118.
to a purchaser will not affect a sub-purchaser who has no such notice, ii., 120.

OATHS (EXTRA JUDICIAL):
declaration substituted in lieu of, when, ii., 127, 128.

OBJECTIONS:
if taken to title, should be forwarded to vendor's solicitor within the time appointed by contract, why, ii., 121.
if vendor's solicitor proceeds to clear up abstract, must be reconsidered to see that this has been done, ii., 122.
practical suggestions respecting, ii., 122.

OCCUPANT (SPECIAL) (see SPECIAL OCCUPANT.)

OCCUPATION:
how far notice of terms of tenancy, ii., 127.
evidence of seisin, ii., 127.

OMISSION:
of documents or facts in abstract renders further inquiry necessary, 276, 277.

ORDERS:
new, for regulating the practice of the Court of Chancery, ii, 271—282.

ORNAMENTAL TIMBER:
tenant for life may be restrained from cutting down, 477.

OUTGOINGS:
stipulation that vendor will discharge, up to a certain period, 129, 134.

OUTLAWS:
may be lessees, 504.
but their interests will be forfeited to the crown, when, 504.
but not leases which they take in a representative character, 504.

OUTSTANDING LEGAL ESTATE:
matter of conveyance only, ii., 89.
no objection to a title that it is vested in an idiot or a lunatic, ii., 89.
vendor must defray the expenses of getting in, ii., 232.

PAPISTS:
formerly disabled from holding lands, 232.
disabilities of, now removed, 232.

PARCELS:
how to be set out in conditions of sale, 11, 12.
how to be set out in abstract, 254.
what will be evidence of seisin, and identity of, ii., 127, 128.
how they ought to be set out in conveyance, ii., 187—191
at law no more of will pass than are described, ii., 187.
error in description of, may be rectified in equity, when, ii., 187, 188.
equity respecting, attaches only as between vendor and vendee, ii., 188.
how to be described in deed of conveyance, ii., 187—191.
description of, should correspond with former deeds, ii., 188.
how to be described, when distinct are held under different titles, ii., 189, 190.
how usually set out in appointments and assignments, ii., 190, 191.
how those which are not intended to pass, should be excluded, ii., 191.

PARCENERS:
form of conveyance by, to a purchaser, No. XX., p. lvi.

PARISH COLLECTOR OF TAXES:
not considered as an accountant to the crown, ii., 80.

PARLIAMENT (ACT OF) (see ACT OF PARLIAMENT.)

PAROL:
written statements cannot be varied by, 13, 14.
agreement may be discharged by, when, 89.

PAROL EVIDENCE:
inadmissible to add to or vary the terms of a written agreement, 37.
when admissible to explain a written agreement, 87—89.
admissible in the case of resulting trusts, 387.

PARTICULARS OF SALE:
practical suggestions respecting, 11—28.
common practice to annex to conditions of, 11, 12.
how they should be framed when the property is sold on behalf of different parties, 12.
leaseholds should be correctly described in, 13.
misdescription in, will vitiate sale, when, 13, 14.
of copyholds should set out the nature of the tenure, 14.
if determinable on lives, and one or more should have dropped, those facts should be stated, 14.
clauses in, where premises are sold subject to an annuity, 17.
ditto to a mortgage, 18.
ditto, as to leases, 18.
ditto, where the subject matter of sale is a reversion, 19.
clauses where subject to quit rents, 19.
value of property should be correctly stated in, 19.
when the property sold is of different tenures, care should be taken to distinguish them in, 20.

PARTIES:
to deeds how to be described in abstract, 252.

PARTIES TO CONVEYANCE:
to deed how to be described, ii., 168.
order in which they should be placed, ii., 168.
persons sometimes made, whose concurrence is not absolutely necessary, ii., 169.
dower trustees need not be made, ii., 169.
cestui que trust must be made, when, 169.
executor must be, when vendor dies pending contract, ii., 170.
also heir-at-law, ii., 170.
when personal representatives should be made, ii., 170.
bankrupt must be made, when, ii., 170.
person whose consent is necessary must be made, ii., 171.
mortgagee should be, when, ii., 171.
how far estopped by recitals, ii., 171, 172.
must convey according to their interests, ii., 184.
as to parties taking under conveyance, ii., 185, 186.
where the purchaser is one of, ii., 186.

PART PERFORMANCE:
will take a case out of the Statute of Frauds, when, 83—87.
what will constitute, 84—86.
to constitute, the act must be done with no other design, 85.
delivery of abstract will not constitute, 85.
whether payment of part of purchase-money will constitute, 85, 86
agreement executed by, binding on representatives, 86, 87.
remainder man may be bound by, when, 87.

PEDIGREE:
should accompany abstract, when, 244.
what will be sufficient evidence of, 277.

PENALTY:
sums payable by way of, how distinguishable from liquidated damages, 104, 105.
attorney, conveyancer, &c. liable to, for not truly setting forth the consideration for the conveyance, ii., 291.
none will attach in consequence of the property being sold for a lesser sum than was originally agreed upon, ii., 291, 292.
upon attorneys, &c., for nonpayment of progressive duties, 305.
amount of, for not duly stamping deeds, &c., ii , 305—306.
what will be evidence of payment of, 306.
as to remission of, ii., 306—308.

PERFORMANCE:
will take a case out of the Statute of Frauds, when, 83—87.
what will amount to, 83, 84.
payment of money will not be considered *semble*, 84, 86.

PEW:
in a church, defective title to, an insufficient ground for rescinding purchase to a house to which it is stated to be appurtenant, 24.

POOR RATE ASSESSMENT:
evidence of seisin or ownership, ii., 127.

POOR RATES:
evidence of seisin and identity of parcels, ii., 127, 128.

PORTIONS:
charged on real estate matter of conveyance only, ii., 70, 88.
release of should be shown, ii., 88.
will be barred at the end of twenty years, when, 88, 89.

POSSESSIO FATRIS:
now abolished, 319, 455.

POSSESSORY TITLE:
origin of, ought to be shown, 8, 9

POSSIBILITIES:
though formerly unalienable might have been released, 153.
may now be alienated, 153, 154.

POWER:
right of donees of, will depend upon the terms of the instrument creating it, 22.
if any particular forms are prescribed by, they must be strictly observed, 221, 418.
omissions in execution of, in wills, how cured by recent Will Act, 419, 420.
how to be abstracted, 255.
of sale, whether it can be exercised when some of donees refuse to concur, 332.
whether if given to executors it will survive, 332.
of leasing, 487—500.
precise terms of must always be complied with, 490.
of illusory appointments, 390—392
recent enactments respecting, 391.
as to wills made under, 418.
when considered as an incumbrance and when not, ii., 75, 77.
distinction between the various kinds, ii., 75—77.
collateral, ii., 75.
appendant, ii., 75, 76.
in gross, ii., 76.
appendant and in gross may sometimes be vested in the same party, ii., 76, 77.
all estates it cannot overreach are incumbrances which are matter of title, ii., 77.

PRÆMUNIRE:
persons attainted of, incapable of holding lands, 231.

PRELIMINARY MATTERS:
importance of careful conduct in arranging, 2.

PRESENTMENTS:
of surrender of copyholds how and when to be made, ii., 18.

PRESENTMENTS—*continued.*
no time should be lost in making, ii., 18.
must correspond with surrender, ii., 18, 19.
should be ascertained that they have been duly made and entered on court rolls, ii., 19.
may be surrendered, when, ii. 19, 20.

PRINCIPAL (see AGENT.)

PRINTED NAME:
sufficient signature within Statute of Frauds, 91.

PRIVATE CONTRACT:
should be ascertained whether preferable to a public sale, 8.
sale if made by, when advertised for sale by auction, public notice should be given, 9, 10.

PRIVITY OF ESTATE:
essential to make covenants run with the land, 410.

PROBATE:
fact of, should be stated in abstract, 260.
evidence of due execution of will of personal estate, 549.
questions frequently arising upon validity of, 549.
sometimes obtained in courts not having competent jurisdiction, 550, 551.
must be taken out in the court that has jurisdiction over the assets of the testator, 550.
when a prerogative one will be necessary, 550.
defect in, how cured, 550, 551.
recital of, No. XII., clause 3, p. xxxv.; No. XIV., clause 3, p. xl.

PROGRESSIVE DUTIES:
practical observations relative to, ii., 292, 293.

PROMISSORY NOTE:
auctioneer by taking, renders himself personally liable to the amount to vendor, 54.

PROPERTY:
should never be misdescribed in particulars or conditions of sale, 14.
fee simple would have passed under that term prior to recent Will Act, 310.

PROTECTION OF PURCHASERS:
against prior and mesne incumbrances, ii., 96, 114.
at law, 96, 106.
of concurrent in courts of law and equity, ii., 96—106.
voluntary settlements, ii., 96, 97.
charitable uses, ii., 97, 98.
defects in sales for the redemption of land tax, ii., 98—100.
bankruptcy ii., 100, 101.
judgments, ii., 101, 102.
lis pendens, ii., 102.
crown debts, ii., 102.
unregistered deeds, ii., 102, 103.

PROTECTION OF PURCHASERS—*continued.*
defects in fines and recoveries, ii., 103.
relief in equity, 106—114.
against defective assurances, ii., 106.
vendor how far bound to perfect, ii., 106, 107.
dormant incumbrances, ii., 108.
legal estate, how far a, ii., 108—114.
requisites to equitable, 110.
how purchase should be pleaded to enable purchaser to obtain equitable, ii., 112, 113.

PROTECTOR:
powers of a married woman, 170.
office of, is assimilated to the former tenant to the præcipe, 173.
qualifications requisite for the office of, 173.
if labouring under legal incapacity who shall act in that capacity, 174, 175.
what number of persons may be appointed as, 175.
aliens incapable of being, 175.
how to be appointed, 175, 176.
powers of, 176.
consent of, how far necessary, 176.
dispositions by tenant in tail, 177.
how such consent may be given, 177.
may consent without parting with his estate, 177.
once given cannot afterwards be retracted, 178.
will confirm voidable estates, 179.
how consent of must be given in barring estates tail in copyholds, 194.
by parting with his own estate in the entailed property does not thereby cease to be the, 221.
how consent of, should be expressed in disentailing assurance. 221.

PUFFING:
will vitiate scale, when, 59, 60; ii., 243.

PURCHASE:
plea of, how to be concluded, ii., 112—114.
must be done by plea and not by answer, 112—114.
plea of, should state purchase according to the facts. ii., 113.
must state that purchase money was actually paid, ii., 113.
plea of, will not be bad merely because it shows purchase money inadequate to the value of the property, ii., 113.
must deny notice of plaintiff's title, ii., 113, 114.

PURCHASE MONEY:
vendor's lien for unpaid, 98—101.
will carry interest, when, 101.
when purchasers although in possession will be exonerated from paying interest on, 101, 102.
will not generally carry interest, 101, 102.
clause stipulating that purchaser shall pay interest upon, 123.

PURCHASE MONEY—*continued.*
clause directing that it shall be calculated at so many years' purchase, 125.
stipulation that it shall be invested in the funds, 135.
stipulation that a moiety of shall be so invested, 144.
when purchaser is exonerated from seeing to the application of, 259, 260; ii., 84, 85, 86.
when real property is devised upon trust to pay debts generally, 259; ii., 84.
aliter if the debts be scheduled, 259; ii., 84.
in purchases of leaseholds from executors purchasers exonerated from seeing to the application of, 260, 261; ii., 84—86.
recital of, by covenantee, No. XVII., clause 3, p. xlviii.

PURCHASER:
entitled to rescind contract when deceived by wilful misdescription, 192.
largest in amount entitled to title deeds, 39.
by employing vendor's solicitor makes him his own agent, 40.
auctioneer agent for, how far, 51.
under a decree cannot substitute another person in his place without leave of the court, 66.
voluntary conveyances void against, when, 223.
clause empowering to rescind sale in case vendor shall fail to comply with the conditions of, 120.
clause directing that he shall pay, 123.
what persons will be considered as within statute 27 Eliz. c. 4, 227.
what persons are incapable of becoming, 229, 232.
when exonerated from seeing to the application of the purchase money, 259, 260; ii., 84, 85, 86.
for valuable consideration entitled to protection, when, ii., 96, 114.
will be protected by an outstanding legal estate, when, ii., 108.
how affected by notice, ii., 110, 114.
even with notice may protect himself against dower, ii., 110.
should be careful not to deal with the estate as owners, until satisfied with title, why, ii., 129.
has no right to compel vendor to prove the execution of deeds, ii., 130.

QUALITY OF ESTATE:
misrepresentation respecting, sufficient ground for rescinding contract, 21.
but purchaser may insist upon completing contract with a compensation, 21.
clause enabling vendor to annul contract in case of deficiency, 22.
vendor may compel a specific performance with compensation for deficiency when the conditions contain an express clause to that effect, 22.
how such clause should be framed, 22.

QUANTITY OF ESTATE:
false description of, will vitiate contract, when, 15; ii., 241, 242.
misdescription in, when matter of compensation, 15, 16.
as to qualification by terms more or less, 16.

QUIET ENJOYMENT (see COVENANTS FOR TITLE.)

QUIETUS:
formerly necessary where vendor was indebted to the Crown, ii., 79.
writing under hands of Commissioners of Treasury now sufficient, ii., 79, 80.

QUIT RENTS:
clause when property is intended to be sold subject to, 19.

RAILWAY SHARES:
sales of, not within Statute of Frauds, 79.

RECEIPT:
memorandum of, should be abstracted, 258.
of trustees when a sufficient discharge to purchasers, ii., 84, 85, 86.
declaration that trustees' shall be a sufficient discharge, No. XLIV., clause 16, p. cxxviii.

RECITAL:
of intent to give, without more, will not amount to a gift, 321.

RECITALS:
stipulation that those contained in ancient deeds shall be conclusive evidence of the facts recited, 32, 120.
how to be abstracted, 152.
how to be inserted in a deed, ii., 172—178.
order in which they should be inserted, ii., 174.
how parties should be described in, ii., 176.
sometimes inserted to identify parcels, ii., 176, 177.
how framed in assignments of leaseholds, ii., 177, 178.
no estoppel except as between parties, ii., 178.
of lease for year, operation of, ii., 178, 179.

RECONVEYANCE:
of mortgaged premises covered by a common deed stamp, ii., 326, 327.

RECORD:
what courts are considered as courts of, 230.

RECORD, DEEDS OF:
whether purchaser will be entitled to attested copies of, ii., 230.

RECOVERY:
suffered by a lunatic how far valid, 161.
tenant in tail could not be restrained from suffering, 170.
was the usual mode of barring entail, 171.
would have barred all remainders expectant on estate tail, 171.
might have been of an equitable as well as of a legal estate, 171.

RECOVERY—*continued.*
could only have been suffered by tenant in tail in possession unless with concurrence of the party seised of the freehold in possession, 172.
restrictions of, how removed, 182.
defects in, how cured, 183.
how to be abstracted, 260.
suffered by mortgagee will not bar mortgagor, 209.

REDDENDUM CLAUSE:
how to be abstracted, 253.
ineffectual unless accurately penned, 515.
cannot be made to strangers, 515.

REDEMPTION (see EQUITY OF REDEMPTION.)

REFERENCE (see MASTER.)

REFEREE (see ARBITRATION.)

REGISTER OFFICE:
should be searched, when, ii., 138.

REGISTRATION:
of deeds should be abstracted, when, 250.
required in certain counties under acts of Parliament, ii., 102.
of a deed will not be deemed constructive notice to a subsequent purchaser, ii., 124.
should be seen that this has been duly done, ii., 124.
office of, should be searched when the lands lie in a register county, ii., 138.

RELEASE:
at common law, what, ii., 155.
would not operate unless releasee was in actual possession, ii., 155, 156.
various kinds of, ii., 155.
rendered as effectual as lease and release, ii., 155.
reference to lease for year in, how dispensed with, ii., 156.

REMAINDER-MAN:
may be bound by contract, when, 87.
will not generally speaking be bound by any acts of tenant for life, 87.
conveyance by, in concurrence with tenant for life, No. XLV., p. cxxx.

RENEWABLE LEASEHOLDS (see LEASEHOLDS.)

RENEWAL (TENANT RIGHT OF.)
observations upon, 531—539.
may be limited or perpetual, 530, 531.
fresh lease granted under, liable to the same incidents as the former one, 533.
how it may be lost, 533, 534.
how benefit of, is transmissible, 535.
by mortgagee, will enure also for benefit of equity of redemption, 535.
persons interested in, how bound to contribute to, 536.

RENEWAL (TENANT RIGHT OF)—*continued.*
under ecclesiastical bodies, 537.
may be subject to strict settlement, 545.
in copyholds, can only be supported by immemorial usage, ii., 37.
practical observations respecting, 37, 38.

RENT-CHARGE:
stipulation that property is to be sold subject to, 127.
a fatal defect in a title, ii., 72.
form of grant of, No. XLIII., p. cviii., No. XLV., p. cxxx.
declaration that it is limited as an indemnity against incumbrances No. XLIII., clause 9, p. cxxii.

RENTS:
amount of should be truly stated, 19.
misrepresentation respecting, will render party liable to action, when, 20.
clause stipulating that purchaser shall indemnify vendor against, 46.
when acceptance of, will confirm a voidable lease, 163, 500.
how reserved in leases by tenant in tail, under stat. 32 Hen. 8, c. 28, 487—489.
what will be considered as the best, 494, 495.
criterion for arriving at, 488, 489.
time at which the render must be made under leasing powers, 495.
proviso for re-entry in default of payment, 495, 496.
cannot be reserved to a stranger, 515, 516.
if reserved simply to lessor, will enure only during his lifetime, 515.
so if limited to lessor or his heir, 515, 516.
also to him and his executors in the case of freehold estate, 516.
or to him and his heirs in the case of a chattel interest, 516.
should be made payable during the term, 516.
may be made to cease at some future period, 516.
if no reversion be left in the lessor, rent will go to his personal representatives, 517.
may be made to commence or determine on a given event, 517.
under demise by tenant in tail, will descend on heir in tail, when, 517.
will go to heir *ex parte materna*, when, 517.
of lands in gavelkind or borough English, will be transmissible according to the reversion, 517.
will not be discharged, though premises be burned down, 520.
receipt of evidence of seisin, ii., 128.

RENTS AND PROFITS:
purchaser to receive, 123.

REPAIRS:
vendor should make no misstatement respecting the condition of, 28.

REPUBLICATION:
of will before the Statute of Frauds, might have been effected by parol, 442.
recent enactments respecting, 443.
effect produced by, upon lapsed devises, 445.

REPUGNANCY:
general rule of construction where one part of an instrument is repugnant to another, 295.
when it occurs in a deed, the former clause will generally prevail, 295.
habendum, how far allowed to explain, 295, 296.
in a will, the latter clause will generally prevail in case of, 297.
when between premises and habendum, the former will generally prevail, 267.

REQUISITIONS:
of title how inserted, 277.
should be forwarded to vendor's solicitor within the time appointed by contract or conditions of sale, ii., 121.
if vendor's solicitor proceeds to comply with, abstract must be reconsidered, to see that this is done, ii., 121.
practical suggestions respecting, ii., 121.

RESCINDING CONTRACT (see ANNULLING SALE.)

RESERVED RIGHTS (see RIGHTS RESERVED.)
observations upon, 8.

RESIDUARY CLAUSE:
general effect of, 311.

RESULTING TRUST:
when a purchase taken in the name of a third person, will be so considered, 224.
ordinary conveyances taken in the name of third parties will be for parties advancing the money, 224, 286.
distinction between ordinary conveyances, and those taken in the name of wife or child, 224—227.
exempted out of Statute of Frauds, 387.
no declaration of trust necessary to create, 387.
parol evidence admissible in cases of, 387, 388.
will arise in favour of *cestui que trust* in case of purchases with trust moneys, 388.
in copyholds, how construed, ii., 35, 36.

RESULTING USES (see USES.)

REVERSION CLAUSE:
how to be abstracted, 256.
usually omitted in modern assurances, ii., 191.

REVERSIONS:
practical suggestions respecting the sale of, 19.
clause for inserting in conditions of sale of, 19.
form of contract for the sale of, 137.
will pass under a devise by those terms, 310.

REVOCATION OF WILLS:
by subsequent conveyances, 397—406.
as to the effect of a constructive conversion, ii., 399.
whether imperfect conveyance would have effected, 401.

REVOCATION OF WILL—*continued.*
whether deed obtained by fraud or compulsion will operate as, 401, 402.
where conveyance to devisee will effect, ii., 402.
effect of new act upon, 403—406.
alteration in circumstances of testator's family will cause, when, 404.
might before the Statute of Frauds, have been effected by parol, 429.
but it must have expressed a present and not a future intent, 429.
what will be sufficient within the statute, 429, 431.
distinction between a revoking instrument and an actual will, 430.
a subsequent will has that operation, when, 431.
by burning, tearing, or otherwise destroying, observations on, 433—436.
destruction of will by mistake will not operate as, 435.
as alteration and erasure, obliteration, interlineation, 436, 437.
as to revocations made under a misapprehension of facts, 437—441.

RIGHT OF POSSESSION:
could not formerly have been transferred at law, 153.
but might have been released, 153.
recent enactments respecting, 153, 154.

RIGHTS RESERVED:
omitting, in particulars of sale will afford ground for rescinding contract, 14, 15.
when matter of compensation, 23.
practical observations respecting, 23.
of way sufficient ground for rescinding contract, 25.
practical remarks as to where lands are sold or leased for building purposes, 47.

RIGHTS OF WAY:
existence of, as to which conditions of sale are silent, will afford ground for rescinding contract, 25.

ROMAN CATHOLICS (see PAPISTS.)

RUMOURS:
vague, indefinite, insufficient to put party upon inquiry, ii., 115.

SALE:
proceedings preliminary to, 2.
value should be ascertained prior to offering property for, 3.
also the title investigated, 4.
power of, will pass a fee, when, 326, 329.
what persons are to sell when the power of, is silent upon that head, 329.
when a power of, will arise by implication, 330.
when powers of, will be considered in the nature of a trust, 330, 331.
as to the survivorship of powers of, 331.
whether a power of, can be exercised when some of the donees refuse to concur, 332.

SALE—*continued.*
under trusts or powers in wills or mortgages, by what persons to be made, 329.
when equity will enforce the trust for, that cannot be exercised at law, 330.
form of, as contained in mortgage deed, No. VII., clause 6, pp. xxii.—xxiv.
proviso that mortgagee will not exercise power of, without giving mortgagor six calendar months previous notice, No. VII., clause 6, p. xxiv.

SALE BEFORE THE MASTER:
how conditions of, should be framed, 10, 49.
how conducted, 62, 66.
how order for sale by private contract may be obtained, 66.
not within the Statute of Frauds, 81.

SALES (BY PRIVATE CONTRACT):
practical observations concerning, 67, 112.
terms of, should be explicitly set forth, 67, 68.
within first and second sections of the Statute of Frauds, 68, 73.
of lands, no action can be brought upon unless there be a written agreement, 75.

SCHEDULE:
when considered as forming part of the deed, ii., 293.
when referred to and not annexed, ii., 293, 294.
as to stamp duties payable upon, ii., 292—294.

SEALING:
essential to the validity of a deed, ii., 223.
by grantor sufficient without signature, when, ii., 223, 224.
must precede delivery, ii., 225.

SEARCH FOR INCUMBRANCES (see INCUMBRANCES.
when to be made, 132, 139.

SECURITIES:
power for trustees to vary, No. XLIV., clause 15, p. cxxviii.

SEISIN:
what will be sufficient evidence of, ii., 127, 128.

SELLER (see VENDOR.)

SHELLEY'S CASE:
practical observations upon the rule in, 334, 349.
when the rule in, will apply, 335.
requisites to the application of the rule, 338.
as to instruments creating and executing powers, 344, 345.
application of rule as to equitable estates, 345.
as to copyholds, 349; ii., 13, 33.
as to estates for years, 34.

SHERIFF:
may seize leases or terms of years, 222.
may also sell the same, 222, 223.
but doubtful whether he can sell an estate *pur autre vie*, 223.
assignments by, liable to stamp duties, ii., 303.

SHOOTING:
right of, how far matter of title, 14.

SIGNATURE:
by auctioneer, how far binding on purchaser, 51.
what will be a sufficient within the Statute of Frauds, 89—94.
indorsement on a draft sufficient, when, 91.
stamping the name sufficient, when, 91.
by mark sufficient, when, 91.
sealing insufficient, 91.
name of party necessary to, 91.
by a witness sufficient, when, 91, 92.
not absolutely necessary to the validity of a deed, ii., 223.
otherwise when prescribed by the terms of a power, ii., 223.
not formerly necessary in the case of a will, 420.
but rendered indispensable by the Statute of Frauds, 420, 421.
what would have been sufficient under that statute, 421.
what under 1 Vict. c. 26; 421, 423.

SIXTY YEARS' TITLE:
purchaser still entitled to, 242, 243.

SLANDER:
of title will render party liable to action, 60.
requisites to support such action, 60; ii., 252.

SOLICITOR:
how vendor's should proceed previously to the sale, 1—10.
should ascertain his client's interest in the property, 6.
also how that interest may be most advantageously disposed of, 7, 8.
name of, usually inserted in advertisements, 9.
also in conditions of sale, 10.
of purchaser, his duties, 48.
proper party to prepare conveyance, 40.
it may be stipulated that it shall be prepared by vendor's, 40.
but this will constitute him purchaser's agent, 40.
practical observations respecting, 40.
notice to client, when, 40.
duties of, with respect to the investigation of the title, 48.
incapable of purchasing of client, 230, 234.
when rendered competent to do so, 234.
under fiat in bankruptcy disabled from purchasing, 235.
duties of, with respect to preparing and delivering abstract, 272.
how far liable when he accepts an unmarketable title, 272, 273.
purchaser's, on receiving back abstract from counsel should give early notice to vendor's, ii., 121.
should also forward him objections or requisitions, if any, ii., 121.

SOLICITOR—*continued.*
vendor's, before he undertakes to comply with requisitions, should ask if these are the only ones required, ii., 122.
vendor's, how he should proceed when objections are taken to the title, ii., 122.
when title deeds are in London, country solicitor should instruct his town agent to inspect deeds there, ii., 125.
if sale is rescinded for defect in title, vendor's should lose no time in calling for return of abstract, ii., 131.
also for counsel's opinion, if any has been taken, 131.
purchaser's, should ask of vendor's, if there are any incumbrances, ii., 132.
if the latter replies in the negative he will be personally liable if there be such, ii., 132.
purchaser should search for judgments, when, ii., 133—136.
can never safely dispense with search for judgments if there be any probability of their existence, ii., 135.
liable if his client suffers any loss from this omission, ii., 135, 136.
liabilities of, for preparing deed in which consideration is not truly expressed, ii., 291.
for nonpayment of progressive duties, ii., 292.

SOLVENCY:
at the time essential to support a purchase taken by a father in the name of a child, 226, 227.

SON:
when a word of limitation, 352, 353.

SPECIAL OCCUPANT (see ESTATES *pur autre vie.*)

SPECIFIC PERFORMANCE:
court of equity will decree, when, ii., 259—270.
jurisdiction of equity in enforcing, of very ancient date, ii., 259.
old practice of courts of equity with respect to, ii., 260.
modern mode of proceeding for, ii., 262.
injunction when granted upon a bill filed for, ii., 262, 263.
bill for, how framed, ii., 262.
by vendor, ii., 262.
by purchaser, ii., 263.
requisites to support bill for, ii., 263.
agreement must be a valid one, ii., 263, 264.
must be certain and fair in all its parts, ii., 263, 264.
usual ground of defence to a bill for, ii., 264, 265.
must be capable of being performed, ii., 265.
as to references for the master, ii., 266, 268.

STAMP DUTIES:
practical observations respecting, ii., 288—332.
ad valorem upon, now placed upon a regularly graduated scale, ii., 288.
as to stock and funded property, ii., 288, 289.
as to bonds and debentures, 289, 316, 317.

STAMP DUTIES—*continued.*
as to mortgages, 289, 316—327.
as to judgments, 289.
where the consideration is an annuity, ii., 289.
where purchase and mortgage are by the same deed, ii., 290, 291.
no *ad valorem* payable where the consideration is merely nominal, ii., 290.
as to the progressive, ii., 292.
as to schedules annexed or referred to by instruments, 293.
ad valorem not chargeable on a deed confirming a defective deed properly stamped, ii., 295.
ad valorem only chargeable on principal or only deed of conveyance, ii., 296.
assignments by sheriff liable to, 297.
conveyances by assignees of bankrupts and insolvents liable to, ii., 304.
but agreements entered into with purchasers, ii., 304.
as to copyholds, ii., 304.
commissioners compelled to stamp assurance upon payment of, and penalty, ii., 305.
what will amount to evidence of payment of, and penalties, ii., 306.
as to leases, ii., 311, 314.
two *ad valorem* duties sometimes payable in respect of, ii., 311.
leases granted in consideration of a fine and a rent above 20*l.* liable to both duties, ii., 311, 312.
in the case of bonds, mortgages, &c., regulated by the principal sum advanced without regard to interest, 316.
what payable upon bonds given by way of collateral security, 317.
as to transfers of mortgages, 322—325.
as to instruments for further assurance only, ii., 325.
as to reconveyances of mortgaged premises, ii., 326, 327.
upon deeds of covenant, 327.
upon settlements, ii., 329.
when settlements are made in pursuance of marriage articles, ii., 330.
construction of certain terms in, 331, 332.

STAMPS:
agreements will require, when, 108—112.
what will be requisite when letters are set up as an agreement, 108, 109.
new stipulation in agreement will not require a fresh, 109.
nor the accession of an additional party, 109.
want of, does not vitiate agreement, 110.
but until stamped cannot be received in evidence, 110.
what agreements will not require, 110, 111.
observations on recent enactments respecting, 111, 112.
of deeds ought to be inserted in abstract underneath the date, 252.
want of, in a schedule referred to in a deed will not affect the deed, ii., 294.

STAMPS—*continued.*
want of does not vitiate the instrument but only renders it inadmissible in evidence, ii., 294, 295.
where a deed contains several distinct matters a distinct stamp will be required in respect of each, ii., 295.

STATUTE OF FRAUDS (see FRAUDS, STATUTE OF.)

STATUTES AND RECOGNIZANCES:
an actual charge upon the lands, ii., 82.
not now binding as against purchasers unless registered, ii., 83.

STATUTES:
West. 2 (*entails*), 170.
6 Edw. 1, c. 5 (*waste dower*), 476.
13 Edw. 1, stat. 3 (*tenants in tail*), 170, 320, ii., 39, 80.
50 Edw. 3, c. 6 (*uses*), 280.
1 Rich. 2, c. 9 (*real actions*), 281.
2 Rich. 2 (*uses*), 281.
1 Hen. 4 (*real actions*), 281.
11 Hen. 6 (*waste*), 281.
1 Rich. 3 (*uses*) 281.
11 Hen. 7 (*entails*), 170.
19 Hen. 8 (*wardships*), 281.
27 Hen. 8, c. 10 (*uses*), 279, 282, 514.
32 Hen. 8 (*corporation leases*), 203.
——— c. 1 (*wills*), 471.
——— c. 28 (*leases by tenants in tail*), 487, 489.
1 Eliz. c. 19 (*corporations*) 201, 203.
13 Eliz. c. 4 (*crown debts*), ii., 80.
——— c. 5 (*voluntary conveyances*), 227.
——— c. 7 (*bankrupts*), 195, ii., 100.
——— c. 10 (*corporations*), 201, 203.
14 Eliz. c. 11 & 12 (*corporations*), 201, 203.
18 Eliz. c. 3 (*leases*), 203.
——— c. 11 (*corporations*), 201, 203, 204.
27 Eliz. c. 4 (*fraudulent conveyances*), 223.
43 Eliz. c. 3 (*charitable uses*), ii., 97, 98.
——— c. 49 (*corporations*), 201, 203, 204.
1 Jac. 1, c. 3 (*corporations*), 203.
——— c. 15 (*bankrupts*), 195, ii., 100.
21 Jac. 1, c. 16 (*limitations*), 273.
——— c. 19 (*bankrupts*) 195, ii., 45.
19 Car. 2, c. 2 (*leasehold estates*), 480.
29 Car. 2, c. 3 (Statute of Frauds), 67, 87, 223, 380, 420—429, 435, 436, 442, 472, 506, 541, ii., 48.
——— c. 7 (*Lord's day*), 254.
——— c. 18 (*enrolment of recognizances*), ii., 82, 83.
3 & 4 Will. & M. (*assets*), 87.
5 & 6 Will. & M. (*stamps*), ii., 305.
6 & 7 Will. 3. c. 12 (*stamps*), ii., 305.

STATUTES—*continued.*
9 & 10 Will. 3, c. 25 (*stamps*), 305.
2 & 3 Anne, c. 4 (*registration*), ii., 102.
5 Anne, c. 18 (*registration*), ii., 102.
6 Anne, c. 18 (*proof of existence of lives*), 481, ii., 101.
——— c. 35 (*registration*) ii., 102.
7 Anne, c. 19 (*infants and lunatics*), 89.
——— c. 20 (*registration*), ii., 102.
5 Geo. 1 (1) (*infants and lunatics*), 89.
8 Geo. 1, c. 85 (*registration*), 102.
5 Geo. 2 (1) (*infants; lunatics*), ii., 89.
8 Geo. 2, c. 6 (*registration*) ii., 102.
9 Geo. 2, c. 5 (*lease for a year*), ii., 178.
——— c. 36 (*mortmain*) 439.
14 Geo. 2, c. 20 (*recoveries*) ii., 108.
——— ——— (*estates pur autre vie*), 472.
1 Geo. 3, c. 3 (*lease for a year*), Ireland, ii., 178.
5 Geo. 3, c. 46 (*stamps*), ii., 308.
6 Geo. 3, c. 56 (*auctions*), 58.
7 Geo. 3, c. 26 (*annuities; infants*), 154.
17 Geo. 3, c. 15 (*corporations*), 201.
——— c. 50 (*auctions*), 58.
——— c. 53 (*advowsons*), 201.
19 Geo. 3, c. 26 (*auctions*), 58.
——— c. 66 (*stamps*), ii., 292.
27 Geo. 3, c. 13 (*actions*), 51.
31 Geo. 3, c. 32 (*roman catholics*), 232.
36 Geo. 3, c. 52 (*stamps*), ii., 289.
37 Geo. 3, c. 14 (*auction duties*), 57; ii., 307.
41 Geo. 3, c. 56 (*incumbents*), 202.
42 Geo. 3, c. 116 (*land tax*), ii., 98.
43 Geo. 3, c. 8 (*copyholds*), 193.
——— c. 4 (*roman catholics*), 232.
——— c. 75 (*lunatics*), 161.
——— c. 127 (*stamps*), 298.
——— c. 195 (*bankruptcy*), 195; ii., 100.
44 Geo. 3, c. 98 (*stamps*), 542; ii., 307.
47 Geo. 3, c. 74 (*assets*), 87.
48 Geo. 3, c. 149 (*stamps*), ii., 290.
50 Geo. 3, c. 43 (*stamps*), ii., 308.
53 Geo. 3, c. 102 (*insolvents*), ii., 26.
54 Geo. 3, c. 28 (*insolvents*), ii., 26.
——— c. 145 (*traitors and felons*), 207.
——— c. 168 (*powers*), 419.
——— c. 173 (*land tax*), ii., 98.
——— c. 187 (*land tax*), ii., 98.
55 Geo. 3, c. 147 (*incumbents*), 202.
——— c. 184 (*stamps*), 108, 542; ii., 56, 57, 286, 287, 2[illegible]
304, 311, 322, 329.
55 Geo. 3, c. 192 (*copyholds*), 270.

STATUTES—*continued*
57 Geo. 3, c. 100 (*land tax*), 99.
1 Geo. 4, c. 119 (*insolvents*), 26.
1 & 2 Geo. 4, c. 55 (*stamps*), ii., 309.
——— c. 141 (*crown debts*), ii., 79.
2 Geo. 4, c. 121 (*crown debts*), ii., 79.
5 Geo. 4, c. 2 (*admeasurement*), 16.
——— c. 184 (*stamps*), ii., 288.
6 Geo. 4, c. 16 (*bankrupts*), 58, 195; ii., 25.
——— c. 17 (*bankrupts*), 58, 195.
——— c. 19 (*bankrupts*), 58, 195; ii., 46.
——— c. 74 (*infants, heirs' trustees*), 211.
7 Geo. 4, c. 57 (*insolvents*), 58, 262; ii., 26.
10 Geo. 4, c. 70 (*roman catholics*), 232.
11 Geo. 4, c. 1 (*infants, trustees*), 213, 506.
11 Geo. 4 & 1 Will. 4, c. 60 (*infants, heirs' trustees*), 211, 213.
1 Will. 4, c. 46 (*illusory appointments*), 392.
——— c. 47 (*infants trustees*), 93.
——— c. 60 (*infant trustees*), 89, 92.
——— c. 65 (*copyholds*), 193.
1 & 2 Will. 4, c. 56 (*bankrupts*), 261; ii., 26.
3 & 4 Will. 4, c. 27 (*limitations, real actions*), 9, 179, 184, 210. 242, 245, 273, 459; ii., 88, 104.
——— c. 67 (*corporations*), 202.
——— c. 74 (*disentailing assurances*), 150, 367; ii., 44, 46, 62, 76, 108.
——— c. 76 (*parish officers*), 232, 154, 164, 184, 190, 208, 220.
——— c. 97 (*stamps*), ii., 308.
——— c. 100 (*prescriptions*), ii., 68.
——— c. 104 (*assets*), ii., 87.
——— c. 105 (*dower*), 260; ii., 5, 73, 74.
——— c. 106 (*inheritance, traitors and felons*), 207, 319, 379, 447—462.
4 & 5 Will. 4, c. 23 (*infants and lunatics*), 93.
——— c. 30 (*inclosures*), 247.
6 & 7 Will. 4, c. 20 (*corporations leases*), 204, 206.
——— c. 71 (*tithes*), 4.
7 Will. 4, c. 71 (*tithes*), 4.
1 Vict. c. 26 (*wills*), 303—305, 313, 315, 322, 324, 326, 328, 333, 334, 355, 393—395, 406, 419, 421—428, 431, 433, 443, 465, 473; ii., 5, 23, 32, 59.
1 & 2 Vict. c. 69 (*infants and lunatics*), 93.
——— c. 71 (*tithes*), 4.
——— c. 110 (*judgments, insolvent debtors*), 261, 262, 263; ii., 6, 83, 101, 109, 116, 117.
2 Vict. c. 4 (*bankrupts*), ii., 100.
——— c. 11 (*judgments, crown debts*), 19; ii., 109, 116, 117.
4 & 5 Vict. c. 21 (*stamps*), ii., 288.
——— ——— (*releases, and lease for a year*), ii., 288.

STATUTES—*continued.*
4 & 5 Vict. c. 52 (*new rules in chancery*), ii., 271.
5 Vict. c. 5 (*new rules in chancery*), ii., 271.
5 & 6 Vict. c. 116 (*insolvents*), 262.
7 Vict. c. 21 (*stamps*), ii., 286.
——— c. 71 (*stamps*), 111.
7 & 8 Vict. c. 66 (*leases*), 503.
——— c. 76 (*conveyances*), 153, 215, 366.
——— (*stamps*), ii., 288.
——— c. 90 (*crown debts*), ii., 79.
——— c. 105 (*duchy lands in Cornwall*), 63—68.
8 Vict. c. 15 (*auctions and auction duties*), 59.
8 & 9 Vict. c. 105 (*new rules in chancery*, ii., 271.
——— c. 106 (*conveyances, leases*), 215, 247, 347, 367, 373, 519, 541; ii., 33, 156.
——— (*stamps*), ii., 288.
——— c. 112 (*satisfied terms*), 562, 563; ii., 73, 111.
12 & 13 Vict. c. 26 (*leases*), 498, 502.
——— c. 106 (*insolvents, bankrupts*), ii., 27, 47.
13 & 14 Vict. c. 97 (*stamps*), ii., 283—332.

STEWARD:
liabilities of, for preparing copyhold assurances in which the consideration is not truly expressed, ii., 291.
(see COPYHOLDS.)

STIPULATIONS:
may be inserted in an agreement which would be open to objection if inserted in conditions of sale, 8.

STOCK:
clauses when it forms the consideration of the purchase, 125.

SURRENDER OF COPYHOLDS: (see COPYHOLDS.)
covenant for, by vendor with purchaser, with usual covenants for title, No. XXXIII., p. lxxxviii.
form of deed to accompany, No. XXXIV., p. xci.
covenant to, of copyholds for lives, No. XXXIV., p. xcii.
assurance of, accompanied by conveyance of freehold and assignment of leasehold property, No. XXXV., p. xciv.

SURRENDER OF TERMS: (see STATUTE OF FRAUDS.)
form of, by mortgagee to a purchaser, No. IV., clause 5, p. xi.

TECHNICAL TERMS:
want of, how supplied in a will, 312.

TENANCY:
constructive notice of a lease when, ii., 127.
but not unless the justice of the case required it, 55, 56.
dispensed with by statute 55 Geo. 3, c. 192, ii., 57, 58.
not necessary in devises made under statute 1 & 2 Vict. c. 26, 59, 60.

TENANCY IN COMMON:
words importing a division will generally create, 358, 359.
when not, 360, 361.

TENANT BY THE CURTESY:
is tenant for his own life, 185.
in what instances he may have a more extensive power of disposition, 186.
cannot be of copyholds, except by custom, ii., 5.
estate of, a fatal objection to a title, ii., 70, 72.

TENANT FOR LIFE:
how he may dispose of his estate most advantageously, 6.
may, unless restrained by express condition, alienate his life interest, 184, 464.
when his attempting to do so will effect as forfeiture, 184, 185.
how far he may be restrained from alienating his estate, 185.
without impeachment of waste, may be restrained from cutting down ornamental timber, 477.
what persons are considered in the same light as, 481.

TENANT FOR YEARS:
unless expressly prohibited may assign his term, 187.
or grant an underlease, 187.
asignment by will amounts to a forfeiture, when, 186.
by operation of law will not amount to, 188.

TENANT IN DOWER: (see DOWER.)

TENANT IN TAIL AFTER POSSIBILITY OF ISSUE EXTINCT:
considered in the same light as tenants for life, 478.

TENANTS IN COMMON:
conveyance, by one, of his undivided moiety, No. XIII., p. xxxviii.
conveyance by two, one of whom is married, his wife concurring to bar her dower, No. XIV., p. xl.

TENANTS IN TAIL:
contract may be enforced against, 150.
but not against the issues, 150.
could not have been restrained from suffering a recovery, 170.
fine by, could only have passed a base fee, 171, 179.
by suffering a recovery could have barred the entail and all remainders expectant thereon, 172.
may bar entail and remainders by disentailing deed where there is no protector, 172, 177.
or where there is a protector with his consent, 172, 177.
aliter no more than a base fee passes, 171, 177.
what are restricted from barring the entail, 182.
other modes of assurance by, 183.

TENANTS IN TAIL—*continued.*
as to copyhold, 193, 194.
usual mode was by recovery in the Lord's Court, 193.
sometimes by surrender, 193.
how now barrable by, 193, 194.
bankrupt estate tail of, how barred, 198.
leases by (see LEASES.)
judgments how binding on estate of, when, 82.

TENANTS PUR AUTRE VIE.
how he may dispose of his interest to the best advantage, 6.
unless restrained by express condition may alienate his estate, 186.
estate of, subject to forfeiture, how, 186.

TENANT TO THE PRÆCIPE:
tenant in tail could not have barred his entail without the consent of, when, 172, 173.
to suffer a recovery must have been seised of the immediate estate of freehold, 173.

TENURE:
nature of, should be set out in particulars of sale, ii., 14.
where lands of different, are sold together, care should be taken to distinguish them, 20.

TESTATUM CLAUSE:
practical observations on penning, 179—187.
how to be abstracted, 253.
should express the consideration for which the conveyance is made, ii., 179, 180.
second, necessary when the conveyance is by appointment and grant, ii., 181.
should contain the proper operative words, ii., 181—184.
where there are several parties how they should convey, ii., 184, 185.

TIMBER:
if purchaser is to pay for, it should be so stated, 36.
clause adapted to that purpose, 36.
what trees considered as such, 36.
purchasers to take at valuation, 36, 115.
tenant for life without impeachment of waste, may act, 476.
but not ornamental timber, 477.
or immature timber, 477.
what so considered, 477.

TIME:
clauses directing that it shall be considered the essence of the contract, 30.
may be made part of the essence of a contract, 135; ii., 236, 237.

TITHE COMMUTATION ACT:
facilities afforded by, for mapping property, 4.

TITHES:
a fatal objection to title where estate is contracted to be sold free from, 15.
agreement for the purchase of, 145.
abstract of how to be prepared, 145.

TITLE:
should be investigated by vendor's solicitor previous to offering property for sale, 3, 5.
to leasehold property (see LEASEHOLDS.)
to customary and copyhold estates (see COPYHOLDS.)
of incumbrances which are matters of, 17, ii., 69—77.
clause for production of, in conditions of sale, 30.
clause enabling vendor to rescind contract if vendor objects to, 30.
as to stipulations for by vendor, 31—39.
as to the commencement of, 31.
that purchaser should be precluded from taking objections to earlier title, 31.
propriety of stipulating by whom expense of barring estates tail, and other matters for perfecting, should be borne, 31, 32.
aliter all these costs must be defrayed by vendor, 31, 32.
where vendor has defective, how he may best protect himself, 33.
general rule respecting the commencement of, 248.
to advowsons (see ADVOWSON.)
to tithes (see TITHES.)
practical observations upon the clearing up and perfecting, ii., 121, 131.
if purchaser's solicitor approves of, he will give early notice of, to vendor's solicitor, ii., 121.
if he disapproves of, should lose no time in duly forwarding objections or requisitions, ii., 121.
may possibly be good, although there are no title deeds, ii., 130.
approval of, by purchaser, as appears by abstract, will not preclude him from showing it to be a bad one, ii., 131.
where abstract discloses a good, vendor must bear the expenses of investigation, ii., 231.
whether if it can be made to only part of premises contracted for, it will entitle purchaser to rescind sale, ii., 239, 240.
defect of, in vendor, will be a ground of defence to an action against purchaser for non-completion of contract, ii., 241.
as to evidence of, in an action at law, ii., 249, 250.
if vendor is unable to confer, no previous tender of conveyance necessary to support action by purchaser, ii., 250, 282.
action for slander of, ii., 251,
a good title means a good title in equity as at law, ii. 255.
reference of, to master, ii., 269.
exceptions, if taken to report of court, will allow vendor reasonable time to remove, 268.
if exceptions taken to, are overruled, other objections cannot be made, ii., 268.
course of proceeding, when bill is dismissed for defect of, ii., 269.

TITLE DEEDS: (see DEEDS.)

TRAITORS:
incapable of holding lands, 206, 505.
disposition of, by, how far valid, 206, 207.
(see ATTAINDER.)

TRUST:
will result in favour of the party who pays the money, although the property is conveyed to another, 386.

TRUSTEES:
are necessary parties to conveyance, 211.
statutory enactments relating to conveyances by the infant heirs of, 211.
acts of, will not prejudice *cestui que trust*, when, 215.
exceptions to this rule, 215, 217.
purchaser from, without notice, would not be bound by, when, 215.
aliter if he has notice, 215.
Statute of Limitations does not run in favour of, when, 217.
may convey against consent of *cestui que trust*, when, 218.
having all an equal power, cannot act separately, 219.
incapable of passing the trust estate, 229, 232.
may purchase after he has been discharged from his trust, when, 233.
proper course to pursue when they are desirous of buying the trust property, 233, 234.
form of conveyance by, under power of sale contained in a will, No. XXI., p. lxi.
declaration that trustees receipts shall be a sufficient discharge to purchasers, No. XLIV., clause 16, p. cxxviii.
power to change, No. XLIV., clause 17, p. cxxviii., cxxix.

TRUST MONEY:
whether they can be followed into lands in which they are invested 380.

TRUSTS:
declarations of, how they shall be abstracted, 256.
how far uses were so considered, 280.
distinctions between, and uses, 291, 292.
executory and executed distinction between, 345.
resulting (see RESULTING TRUSTS.)

TRUSTS FOR SALE:
form of recital of devise upon, No. XXI., clause 2, p. lxi.

UNAPPROPRIATED FUNDS:
what persons are entitled to, 388, 389.

UNDERLEASE:
tenant under, not liable to covenants contained in original lease, 521.
granting of, no breach of covenant, not to assign without licence, 527.
reservation of portion of term, however small, will prevent instrument from operating as, 577.

UNDIVIDED MOIETY:
form of conveyance of, by tenant in common to a purchaser, No. XIII., p. xxxvii.

UNDUE INFLUENCE:
assurances obtained by, may be set aside when, 160, 162.

UNHEALTHY LIVES:
capable of being insured, 7.

UNREGISTERED DEEDS:
protection of purchasers in the case of, ii., 102.

UNTECHNICAL EXPRESSIONS:
may supply the place of words of limitation, when, 312, 313.

USE AND OCCUPATION:
when vendor may maintain action for, ii., 251.

USES:
declaration of, how to be abstracted, 255, 266.
practical observations upon, 280—293.
definition of, 280.
what before the statute of, 280.
operation of the statute upon, 282.
what persons may be seised to, 283.
what description of the property may be limited, 284.
to whom they may be limited, 285.
how executed into possession, 285, 286.
what persons may take under, who could not have been at common law, 286.
fee may be limited to take effect after a fee under limitations to, 286.
of shifting, 287.
of resulting, 287.
distinction between a feoffment to, and a covenant to stand seised to, 288.
requisites to support a covenant to stand seised of, 289.
defective conveyance may sometimes be effectual as covenant to stand seised to. 189.
distinction between conveyances to and conveyances at common law, 286.
cannot be limited on, 291.
distinction between, and trusts, 291, 292.
declaration of copyhold estates, ii., 29.
quære, if no declaration of, in a surrender of copyholds, it will enure for the benefit of the lord, ii., 35.

VALUE:
of property should be ascertained previously to offering it for sale, 3.
how best arrived at, 3.
should be correctly stated in advertisements or in particulars of sale, 18.

VENDOR:
his interest in the property should be ascertained previous to offering it for sale, 7.
should be careful to make no misstatements respecting the property, 28.
unless he stipulated to the contrary must bear all the costs of making out his title, 31.
how he may best protect himself against a defective title, 30, 32, 33.
bound to produce documents in verification of abstract, 124.
to pay the costs of such production and journeys thereby incurred by purchaser's solicitor, when, ii., 124.
but not expenses of journeys unnecessarily incurred, ii., 125.
how far bound to perfect an imperfect assurance, his liability is personal, and not descending on his heir,
but if latter does so, he will be bound by it,
must pay costs of investigating title when it turns out bad, ii., 131.
not bound to discharge incumbrances discovered after the conveyance, ii., 136.
aliter if he was guilty of fraud by concealing the defect, ii., 136.
remedies of, for breach of contract, ii., 246—270.
his remedies at law, ii., 246—253.
in equity, ii., 259—270.

VOIDABLE CONTRACTS:
capable of confirmation, when, 163.

VOIDABLE ESTATE:
how confirmed, 179.
cannot be confirmed against a subsequent purchaser without notice, 179.

WARRANTY:
tenant in tail might have barred his issue by, when, 183.
how now abolished, 183.

WASTE:
practical observations upon, 476, 478.
equity will restrain by injunction, when, 476—478.
what tenant for life unimpeachable for, may commit, 476, 477.
as to provisoes for re-entry in case of, usually contained in leases, 496.

VOIDABLE LEASE:
rendered valid by subsequent acceptance of rent, when, 163.
(see INVALID LEASES.)

VOID LEASE:
no subsequent acceptance of rent can render valid, 179.

VOLUNTARY CONVEYANCE:
does not deprive settlor of a future power of disposition over the same property, when, 220.
purchaser unaffected by notice of, when, 220, 221.

VOLUNTARY CONVEYANCE—*continued.*
what species of instrument will be so considered, 223.
distinction between, and purchases taken in the names of wife and children, 224.
void at law against subsequent purchasers, even with notice, ii., 96.
rule applicable as well to copyhold as to freehold estates, ii., 96.

WAYS:
existence of rights of, in third parties will afford sufficient ground for rescinding contract, 25.

WEAK INTELLECT:
persons of, not disabled from entering into contracts, 162.

WIDOW:
will be put to her election, when, 380.

WILLS:
how to be abstracted, 251, 259.
probate copy of, usually received as satisfactory by conveyances, 259.
should be abstracted more fully than a deed, why, 259, 260.
where different clauses in, are repugnant to each other, the latter will generally prevail, 297, 298.
more liberal construction allowed in the exposition of, than deeds, 303.
fee-simple may pass without words of limitation by, when, 303, 306—312.
effect of new act upon general devisee of real property, 393, 406.
now speak from death of testator, 396.
act does not extend to wills made previously to 1834, p. 395.
as to lapsed devises, 395, 396.
effect of subsequent conveyance upon, 397, 403.
would formerly have revoked, 397.
mortgage only a revocation of, *pro tanto*, 398, 399.
constructive conversion of realty into personalty, a revocation of, 399.
conveyance for the purpose of partition would not have revoked, 399.
aliter, if new uses had been declared, 399.
surrender of copyholds no revocation of, 400.
leases only a revocation *pro tanto*, 400.
simple acquisition of legal estate would not have revoked, 400.
mere change of trustees no revocation, 401.
whether imperfect conveyances would have effected a revocation of, 401.
deed obtained by fraud or compulsion no revocation, 401.
how far a contract to sell would have revoked, 402.
conveyance to devise how far a revocation, 402, 403.
effect produced upon by recent enactments, 403, 406.
how a revocation may be effected by subsequent alteration of testator's family circumstances, 403.
operation of New Will Act, 405, 406.
of the execution and attestation of, 420, 428.
provision of the Statute of Frauds respecting, provisions of the statute, 1 Vict. c. 26, respecting, 420, 421.

WILLS—*continued.*
how, must be signed in pursuance of recent Will Act, 421.
operation of, with respect to blanks, 422.
as to the attestation, 433, 425.
as to wills under powers, 425.
what will be considered an attestation in testator's presence, 426, 427.
as to the competency of witnesses to, 427.
attesting witnesses to, incapable of taking any benefit under, 428.
of the revocation of, 429.
alterations in the law effected by Statute of Frauds, 429, 433.
when subsequent, will revoke a former one, 433, 436.
destroyed by mistake no revocation, when, 435.
attestation and erasure, how far a revocation, 436, 437.
obliteration or interlineation how far a revocation, 436, 437.
revocation made under a misapprehension of facts, will not have that operation when, 437, 439.
republication of (see REPUBLICATION OF WILLS.)
of republication (see COPYHOLDS.)
must be ascertained that they have been duly executed.
recital of, No. XII., clause 2, p, xxxv., No. XIV., clause 2, p. xl.
WITNESSES:
signature by, how far personally binding, 91.
one sufficient, for the execution of a deed, 91.
not actually necessary that he should sign his name, ii, 226.

LONDON:
Printed by JOHN CROCKFORD, 29, Essex Street, Strand.

TEMPLE